

No. 11352

United States
Circuit Court of Appeals
For the Ninth Circuit.

SOUTHERN PACIFIC COMPANY, a corporation,

Appellant,

vs.

RECONSTRUCTION FINANCE CORPORATION, substituted as party defendant in the place of Defense Supplies Corporation, a corporation,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

JUL 29 1943

PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the United States District Court for the
Northern District of California,
Southern Division

No. 23495-G

SOUTHERN PACIFIC COMPANY,
a corporation,

Plaintiff,

v.

DEFENSE SUPPLIES CORPORATION,
a corporation,

Defendant.

COMPLAINT FOR FREIGHT CHARGES

Plaintiff, Southern Pacific Company, represents
and alleges as follows: [1*]

COUNT ONE

I.

This action arises under a law of the United States regulating interstate commerce in that it arises under Section 6(7) and other sections of Part I of the Interstate Commerce Act, as hereinafter more fully appears.

II.

Plaintiff is now, and was during all of the times hereinafter mentioned, a corporation duly created, organized, and existing under the laws of the State

* Page numbering appearing at foot of page of original certified Transcript of Record.

of Kentucky, authorized to do and doing business in the State of California and in other states, and, as such corporation was, during all of said times, engaged as a common carrier by railroad in the transportation of persons and property for hire in interstate commerce over its lines and in participation with other common carriers by railroad in and through various states of the United States.

III.

Defendant is now, and was during all of the times hereinafter mentioned, a corporation created by the Reconstruction Finance Corporation at the request of the Federal Loan Administrator with the approval of The President, pursuant to authority contained in Section 5d of the Reconstruction Finance Corporation Act, as amended by Act of Congress approved June 25, 1940, said corporation having its principal office located in the City of Washington, District of Columbia.

IV.

During the years 1942 and 1943, beginning in the month of July, 1942, plaintiff, in participation with other interstate common carriers by railroad, at the request of defendant, transported for and on behalf of defendant from Seattle, Washington, to Los Angeles, California, and from Seattle, Washington, to Vernon, California (Vernon being within the tariff switching limits of [2] Los Angeles), upon Government bills of lading, a number of tank car shipments of Benzol. On each of said bills of

lading Defense Supplies Corporation (Seattle Gas Company) is shown as shipper or consignor, and Defense Supplies Corporation, c/o Wilshire Oil Company, is shown as consignee. Plaintiff, as the final and delivering carrier, made delivery of said shipments in accordance with said bills of lading.

Annexed to this complaint and made a part hereof is a statement or compilation marked "Exhibit A," consisting of Sheets 1 to 14, both inclusive, including a Summary Sheet (Sheet 14), showing the details of the transportation services performed as aforesaid, including the kind of property transported, the points between which transportation was performed, the routes of movement, the numbers of plaintiff's bills and dates thereof, the numbers of Government bills of lading and dates thereof, identify of cars in which transportation was performed, dates of delivery, weights of carload shipments transported, applicable tariff rate, amounts billed, amounts paid, balances claimed, reference to settlements made including check numbers and dates of receipt of checks (dates of receipt follow check numbers), and reference to the lawfully published and effective tariffs containing the freight rate or rates applicable to the transportation of the shipments involved and conditions in connection therewith, said tariffs being shown by their abbreviations, which are well known among carriers and shippers.

V.

Each of the carriers participating in said trans-

portation was, at all times herein mentioned, a party to and participated in the tariff or tariffs specifying the applicable rate or rates for said transportation services. Said tariffs and the rates specified therein were duly published and filed with the Interstate Commerce Commission as required by the provisions of Section 6 of [3] Part I of the Interstate Commerce Act and were in legal effect at the time when the shipments were made. Plaintiff based the amounts of the charges billed defendant for said transportation services on the duly published and filed and legally effective applicable rate or rates specified in said applicable tariff or tariffs and shown as aforesaid in "Exhibit A," attached hereto.

VI.

Said shipments were billed and forwarded with charges collect, and plaintiff, being the delivering carrier charged with the duty of collecting the entire freight charges on said shipments, duly presented to defendant its respective bills therefor aggregating the sum of Fifty-six Thousand Seven Hundred Thirty-six and 14/100 Dollars (\$56,736.14) for the transportation charges for said shipments as shown on Sheet 14 of "Exhibit A," attached hereto, based upon the lawful and applicable rate or rates as aforesaid. Defendant, however, refused to make payments in amounts aggregating the sum of Fifty-six Thousands Seven Hundred Thirty-six and 14/100 Dollars (\$56,736.14) for such transportation services, and paid to plaintiff

amounts aggregating the sum of Thirty-three Thousand Six Hundred Eighty-six and 63/100 Dollars (\$33,686.63) only, as shown on Sheet 14 of said "Exhibit A," attached hereto. The amounts so paid were accepted by plaintiff under protest as part payments only and plaintiff subsequently rendered its bills to defendant for the unpaid balances of said transportation charges, which defendant had withheld, but defendant failed and refused and still fails and refuses to pay said amounts or any part thereof.

VI..

By reason of the facts hereinbefore set forth plaintiff is justly entitled to recover from defendant the sum of Twenty-three Thousand Forty-nine and 51/100 Dollars (\$23,049.51), with interest on the portion thereof applicable to each shipment from [4] the date of delivery of each such shipment, until paid.

COUNT TWO

VIII.

(a) This action arises under a law of the United States regulating interstate commerce in that it arises under Section 6(7) and other sections of Part I of the Interstate Commerce Act, as hereinafter more fully appears.

(b) This action arises under the laws of the United States and more especially under Section 321 of Part II, Title III, of the Transportation Act of 1940 (54 Stat. L. 954), as hereinafter more fully

appears, and the matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand and 00/100 Dollars (\$3,000.00).

IX.

Plaintiff refers to and hereby incorporates by reference as fully as though here repeated, Paragraphs II, III, IV and V of Count One herein and all of the allegations contained in said Paragraphs.

X.

Said shipments were billed and forwarded with charges collect, and plaintiffs, being the delivering carrier charged with the duty of collecting the entire freight charges on said shipments, duly presented to defendant its respective bills therefor aggregating the sum of Fifty-six Thousand Seven Hundred Thirty-six and 14/100 Dollars (\$56,736.14) for the transportation charges for said shipments as shown on Sheet 14 of "Exhibit A," attached hereto, based upon the lawful and applicable rate or rates as aforesaid. Defendant, however, claiming the right to make land-grant deductions from the full applicable commercial charges, refused to make payments in amounts aggregating the sum of Fifty-six Thousand Seven Hundred Thirty-six and 14/100 Dollars (\$56,736.14) for such transportation services, and paid to plaintiff amounts [5] aggregating the sum of Thirty-three Thousand Six Hundred Eighty-six and 63/100 Dollars (\$33,686.63) only, as shown on Sheet 14 of said "Exhibit A," attached hereto. The amounts so paid

were accepted by plaintiff under protest as part payments only and plaintiff subsequently rendered its bills to defendant for the unpaid balances of said transportation charges, which defendant had withheld, but defendant failed and refused and still fails and refuses to pay said amounts or any part thereof.

XI.

All carriers by railroad owning and operating or operating lines of railroad constructed with the aid of grants of land received from the United States, either directly or through a predecessor or predecessors in interest, participating in the transportation of the shipments herein described, and each of them, and all carriers by railroad owning and operating or operating lines of railroad constructed with the aid of grants of land received from the United States, either directly or through a predecessor or predecessors in interest, parties to and participating in any land grand route or routes with which the route or routes of movement of said shipments herein described were equalized under agreements with the United States from the standpoint of net charges to the United States for transportation service, and each of them, had, prior to and at the time of said shipments, filed with the Secretary of the Interior of the United States, in the form and manner prescribed by him, releases of all of their, and its, claims against the United States to lands, interests in lands, compensation, or reimbursement on account of lands and interests in lands which have been granted, claimed

to have been granted, or which it was claimed should have been granted to any such carrier or predecessor in interest under any grant to such carrier or predecessor in interest in full and complete compliance with the provisions and requirements of paragraph (b) of Section 321 of Part II, Title III, of the Transportation Act of 1940 (54 Stat. L. 954); Southern Pacific Railroad Company and Central Pacific Railway Company, owners and lessors, severally, of portions of the lines of railroad operated by Southern Pacific Company, and Southern Pacific Land Company, transferee of certain interests of Southern Pacific Railroad Company and Central Pacific Railway Company, and each of them, had, prior to and at the time of said shipments, filed with the Secretary of the Interior of the United States in the form and manner prescribed by him, like releases. Each of such releases so filed was approved by the Secretary of the Interior prior to the shipments in question and the performance of the transportation service hereinbefore set forth.

XII.

By reason of the facts hereinbefore set forth plaintiff is justly entitled to recover from defendant the sum of Twenty-three Thousand Forty-nine and 51/100 Dollars (\$23,049.51), with interest on the portion thereof applicable to each shipment from the date of the delivery of each such shipment, until paid.

Wherefore, plaintiff demands judgment against

defendant for the sum of Twenty-three Thousand Forty-nine and 51/100 Dollars (\$23,049.51), together with interest on the portion thereof applicable to each shipment from the date of delivery of each such shipment until paid and for its costs of suit herein incurred.

C. W. DURBROW,

CHARLES W. BURKETT, Jr.,

C. O. AMONETTE,

Attorneys for Plaintiff. [7]

BEVZOL SHIPMENTS FROM SEATTLE, WASHINGTON, TO LOS ANGELES, CALIFORNIA, VIA UNION PACIFIC RAILROAD COMPANY TO EAST PORTLAND, OREGON, THENCE VIA SOUTHERN PACIFIC COMPANY.

G.P. Co. Bill Date Number	Bill of Lading Date and Number	Car Initials and Number	Delivered On or About	Weight of Shipment (Pounds)	Applicable Tariff Rate Per Cwt.	Amount Billed (Dollars)	Amount Paid (Dollars)	Balance Claimed (Dollars)	Reference to Settlement Check Number and Date Received
Aug. 1942 # 105009	7/18/42 319304	UOXX 10252	7/28/42	73940	\$.93 *	\$ 687.64	\$ 408.29	\$ 279.35	
	7/18/42 319303	" 10200	7/29/42	73460	.93 *	683.18	405.63	277.55	
	7/19/42 319302	" 10202	7/28/42	73940	.93 *	697.64	408.29	279.35	
	7/18/42 319301	" 10007	7/28/42	70300	.93 *	653.79	388.18	265.61	
	7/21/42 319306	" 10313	7/31/42	72840	.93 *	677.41	402.20	275.21	932941
						<u>\$3,389.66</u>	<u>\$2,012.59</u>	<u>\$1,377.07</u>	4/23/43
Aug. 1942 # 105210	7/21/42 319305	UOXX 10325	7/31/42	72800	\$.93 *	\$ 677.04	\$ 401.99	\$ 275.05	
	7/21/42 319308	" 10303	9/1/42	72700	.93 *	676.11	401.43	274.68	
	7/21/42 319307	" 10333	9/1/42	72800	.93 *	677.04	401.99	275.05	932941
						<u>\$2,030.19</u>	<u>\$1,205.41</u>	<u>\$ 824.78</u>	4/23/43
Oct. 1942 # 130395	9/25/42 319310	UOXX 10220	10/10/42	74440	\$.93 *	\$ 692.29	\$ 411.04	\$ 281.25	932941
									4/23/43
Totals									
				\$6,112.14	\$3,629.04	\$2,483.10			

* Tariff References: FWTB 1-S ICC 1352 July 15, 1940 (Item 4640-B, 3rd Revised Page...243, Correction No. 871, Effective May 6, 1941.)
J. P. HAYES X 148 ICC 1413 March 18, 1942.

EXPORT SHIPMENTS FROM SEATTLE, WASHINGTON, TO LOS ANGELES AND VERNON, CALIFORNIA, VIA UNION PACIFIC RAILROAD COMPANY TO EAST PORTLAND, OREGON, THENCE VIA SOUTHERN PACIFIC COMPANY.

S.P.Co. Bill Date and Number	Bill of Lading Date and Number	Car Initials and Number	Delivered On or About	Weight of Shipment (Pounds) (To Los Angeles)	Applicable Tariff Rate Per Cwt.	Amount Billed (Dollars)	Amount Paid (Dollars)	Balance Claimed (Dollars)	Reference to Settlement Check Number and Date Received
Oct. 1942 P 132511	9/25/42 319309	GATX 23986	10/9/42	59820	\$.93 *	\$ 556.33	\$ 330.31	\$ 226.02	932941 4/23/43
(To Los Angeles)									
Oct. 1942 P 141295	9/29/42 319376	UOCX 10254	10/11/42	74500	\$.93 *	\$ 692.85	\$ 411.37	\$ 281.48	932941 4/23/43
(To Vernon)									
Nov. 1942 P 156290	10/29/42 319379	UOCX 10292	11/14/42	74920	\$.93 *	\$ 696.76	\$ 413.69	\$ 283.07	932941 4/23/43
	10/23/42 319377	" 10291	11/10/42	73580	.93 *	685.22	406.84	278.38	
	10/23/42 319378	" 10209	11/10/42	74000	.93 *	688.20	408.62	279.58	
	10/31/42 319380	" 691	11/13/42	74260	.93 *	690.62	410.05	280.57	
						<u>\$2,760.80</u>	<u>\$1,639.20</u>	<u>\$1,121.60</u>	
Totals						\$4,009.98	\$2,380.86	\$1,629.10	

Tariff References: FFB 1-S ICC 1352 July 15, 1940 (Item 4640-B, 3rd Revised Page...243, Correction No. 871, Effective May 2, 1941).
J.P. HAYNES X 148 ICC 1413 March 18, 1942.

NOTE: Vernon is within Los Angeles tariff switching limits. See Southern Pacific Terminal Tariff No. 230-J, ICC 4574, Effective April 9, 1927 (Item 4810-K, Thirty-second Revised Page...147, Correction No. 3078, Effective Sept. 10, 1942).



BENZOL SHIPMENTS FROM SEATTLE, WASHINGTON, TO VERNON, CALIFORNIA, VIA UNION PACIFIC
RAILROAD COMPANY TO EAST PORTLAND, OREGON, THENCE VIA SOUTHERN PACIFIC COMPANY.

S.P.Co. Bill Date and Number	Bill of Lading Date and Number	Car Initials and Number	Delivered On or About	Weight of Shipment (Pounds)	Applicable Tariff Rate Per Cwt.	Amount Billed (Dollars)	Amount Paid (Dollars)	Balance Claimed (Dollars)	Reference to Settlement Check Number and Date Received
Dec. 1942	11/10/42								
F 162996	319381	QATX 14140	12/1/42	60080	\$.93 *	\$ 558.74	\$ 331.76	\$ 226.98	
	11/13/42								
	319383	UOCX 9076	11/26/42	70200	.93 *	652.86	387.63	265.23	
	11/13/42								
	319382	" 9073	11/26/42	70040	.93 *	651.37	386.74	264.63	932941
						<u>\$1,862.97</u>	<u>\$1,106.13</u>	<u>\$ 756.84</u>	4/23/43
Dec. 1942	11/17/42								
F 164951	319384	UOCX 8055	12/4/42	62980	\$.93 *	\$ 585.71	\$ 347.76	\$ 237.95	
	11/20/42								
	319385	" 8041	12/2/42	60540	.93 *	563.02	334.29	228.73	932941
						<u>\$1,148.73</u>	<u>\$ 682.05</u>	<u>\$ 466.68</u>	4/23/43
Totals						\$3,011.70	\$1,788.18	\$1,223.52	

*Tariff References: PFTB 1-S ICC 1352 July 15, 1940 (Item 4640-B, 3rd Revised Page...243, Correction No. 871, Effective May 6, 1941).
J.P. HAYNES X 148 ICC 1413 March 18, 1942.

NOTE: Vernon is within Los Angeles tariff switching limits. See Southern Pacific Company Terminal Tariff No. 230-J, ICC 4574, Effective April 9, 1927 (Item 4810-K, Thirty-second Revised Page...147, Correction No. 3078, Effective Sept. 10, 1942).

**BENZOL SHIPMENTS FROM SEATTLE, WASHINGTON, TO VERNON, CALIFORNIA, VIA NORTHERN PACIFIC
RAILWAY COMPANY TO EAST PORTLAND, OREGON, THENCE VIA SOUTHERN PACIFIC COMPANY.**

S. P. Co. Bill Date and Number	Car Bill of Lading Date and Number	Initials and Number	Delivered On or About	Weight of Shipment (Pounds)	Applicable Tariff Rate Per Cwt.	Amount Billed (Dollars)	Amount Paid (Dollars)	Balance Claimed (Dollars)	Reference to Settlement Check Number and Date Received
Dec. 1942 F 172454	12/4/42 319388	CAIX 4040	12/16/42	59800	\$.93 *	\$ 556.14	\$ 330.20	\$ 225.94	932941 4/23/43
Dec. 1942 F 173020	11/27/42 319386	UOCX 10234	12/9/42	74800	\$.93 *	\$ 695.64	\$ 413.03	\$ 282.61	
	12/1/42 319387	SOXX 691	12/11/42	75060	.93 *	698.06	414.46	283.60	932941 4/23/43
						<u>\$1,393.70</u>	<u>\$ 827.49</u>	<u>\$ 566.21</u>	
Jan. 1943 F 180590	12/10/42 319389	UTLX 34888	12/20/42	75760	\$.93 *	\$ 704.57	\$ 418.33	\$ 286.24	932941 4/23/43
Jan. 1943 F 181034	12/12/42 319390	UOCX 10150	12/28/42	74750	\$.93 *	\$ 695.27	\$ 412.81	\$ 282.46	
	12/15/42 319391	UTLX 38875	12/26/42	74840	.93 *	696.01	413.25	282.76	
	12/16/42 319392	" 35224	12/29/42	74980	.93 *	697.31	414.03	283.28	
	12/22/42 319393	" 37553	1/4/43	74620	.93 *	693.97	412.03	281.94	932941 4/23/43
						<u>\$2,782.56</u>	<u>\$1,652.12</u>	<u>\$1,130.44</u>	
Totals						\$5,435.97	\$3,228.14	\$2,208.83	

Tariff References: FTB 1-S ICC 1352 July 15, 1940 (Item 4540-B, 3rd Revised Page...243, Correction No. 871, Effective May 6, 1941).
J.P. HAYNES X 148 ICC 1413 March 18, 1942.

NOTE: Vernon is within Los Angeles tariff switching limits. See Southern Pacific Company Terminal Tariff No. 230-J, ICC 4571, Effective April 9, 1927 (Item 4810-K, Thirty-second Revised Page...147; Correction No. 3078, Effective Sept. 10, 1942).

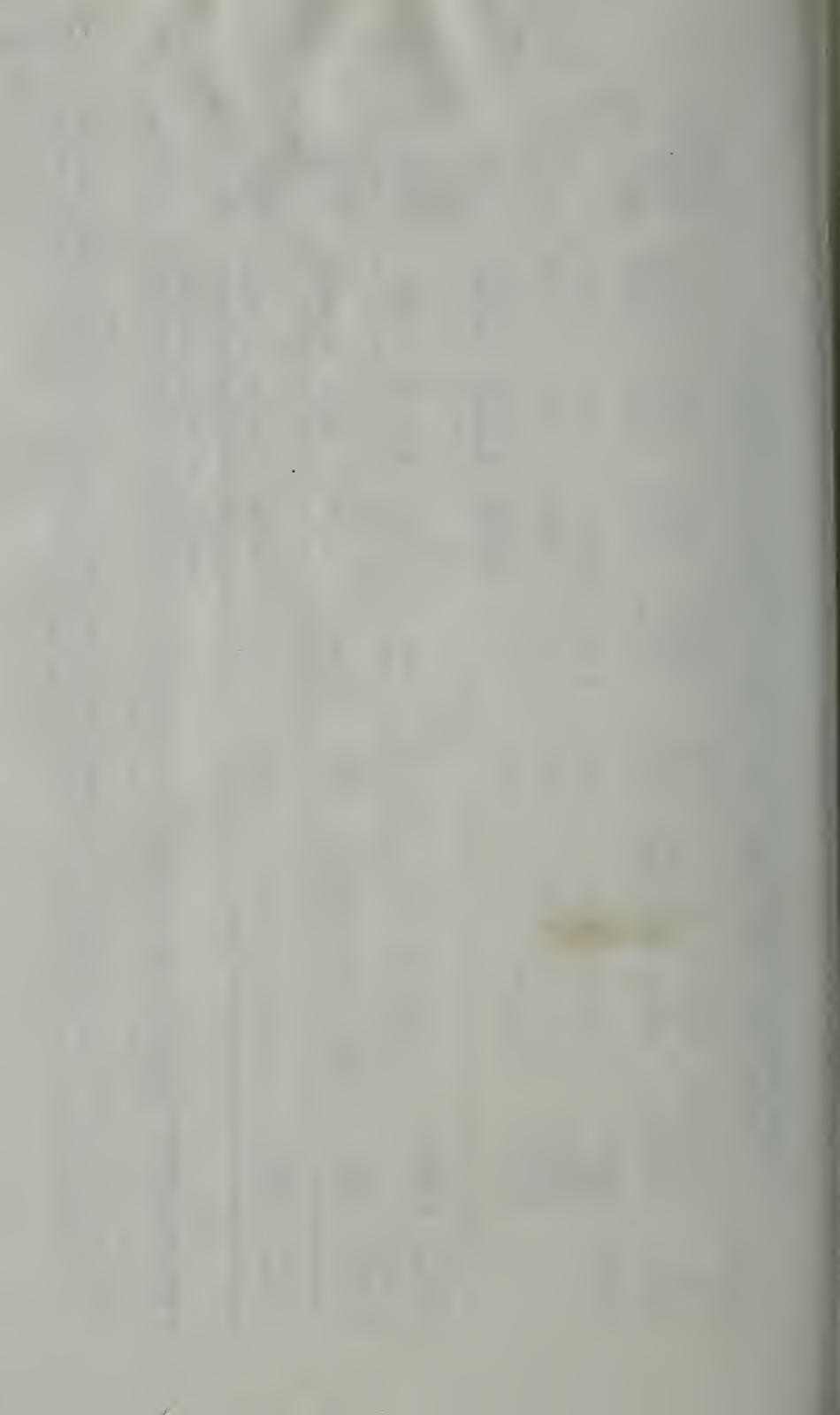
BENZOL SHIPMENTS FROM SEATTLE, WASHINGTON, TO VERNON, CALIFORNIA, VIA NORTHERN PACIFIC
RAILWAY COMPANY TO EAST PORTLAND, OREGON, THENCE VIA SOUTHERN PACIFIC COMPANY.

S.P.Co.

Bill Date and Number	Bill of Lading Date and Number	Car Initials and Number	Delivered On or About	Weight of Shipment (Pounds)	Applicable Tariff Rate Per Cwt.	Amount Filled (Dollars)	Amount Paid (Dollars)	Balance Claimed (Dollars)	Reference to Settlement Check Number and Date Received
Jan. 1943 F 182418	12/24/42 319395	UCCX 10298	1/5/43	75420	\$.93 *	\$ 701.41	\$ 416.46	\$ 284.95	
	12/24/42 319394	" 10270	1/5/43	74000	.93 *	688.20	408.61	279.59	
	12/30/42 319398	UTIX 21842	1/12/43	59900	.93 *	557.07 <u>\$1,946.68</u>	330.75 <u>\$1,155.82</u>	226.32 <u>\$ 790.86</u>	932941 4/23/43
Feb. 1943 F 187895	12/29/42 319397	UTIX 71153	1/12/43	60900	\$.93 *	\$ 566.37	\$ 336.28	\$ 230.09	932941 4/23/43
Feb. 1943 F 196240	1/8/43 319402	UCCX 10220	1/21/43	75000	\$.93 *	\$ 697.50	\$ 414.14	\$ 283.36	932941 4/23/43
Feb. 1943 F 191426	1/8/43 319403	UCCX 10073	1/19/43	69940	\$.93 *	\$ 650.44	\$ 386.19	\$ 264.25	932941 4/23/43
Totals						\$3,860.99	\$2,292.43	\$1,568.56	

* Tariff References: FFB 1-S ICC 1352 July 15, 1940 (Item 4640-B, 3rd Revised Page...243, Correction No. 271, Effective May 6, 1941).
J.F. HAYES X 148 ICC 1413 March 18, 1942.

NOTE: Vernon is within Los Angeles tariff switching limits. See Southern Pacific Company Terminal Tariff No. 230-J, ICC 4574, Effective April 5, 1927 (Item 4810-K, Thirty-second Revised Page...147, Correction No. 3078, Effective Sept. 10, 1942; and Thirty-third Revised Page...147, Correction No. 3100, Effective Dec. 26, 1942).



**BENZOL SHIPMENTS FROM SEATTLE, WASHINGTON, TO VERNON, CALIFORNIA, VIA NORTHERN PACIFIC
RAILWAY COMPANY TO EAST PORTLAND, OREGON, THENCE VIA SOUTHERN PACIFIC COMPANY.**

S.P.Co.

Bill Date and Number	Car Initials and Number	Weight of Shipment (Pounds)	Applicable Tariff Rate Per Cwt.	Amount Billed (Dollars)	Amount Paid (Dollars)	Balance Claimed (Dollars)	Reference to Settlement Check Number and Date Received
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Feb. 1943
F 191950

1/21/43
319405
1/19/43
319404
12/28/42
319593

UTLX 7720	2/2/43	48400	\$.93 *	\$ 450.12	\$ 267.26	\$ 182.86	
UOCX 10350	2/2/43	75150	.93 *	698.99	415.01	283.98	
UTLX 36738	1/10/43	75380	.93 *	701.03	416.23	284.80	932941
				<u>\$1,850.14</u>	<u>\$1,098.50</u>	<u>\$ 751.64</u>	4/23/43

Mar. 1943
F 202008

2/16/43
319602
2/18/43
319603
2/22/43
319604

UOCX 8066	2/27/43	60420	\$.93 *	\$ 561.91	\$ 333.63	\$ 228.28	
GATX 24374	3/1/43	59320	.93 *	551.68	327.56	224.12	
UOCX 6062	3/11/43	48700	.93 *	452.91	268.91	184.00	932941
				<u>\$1,566.50</u>	<u>\$ 930.10</u>	<u>\$ 636.40</u>	4/23/43

Mar. 1943
F 205361

2/24/43
319605

UOCX 10331	3/6/43	74740	\$.93 *	\$ 695.08	\$ 412.70	\$ 282.38	936584
							5/19/43

Totals

\$4,111.72 \$2,441.30 \$1,670.42

* Tariff References: PTB 1-S ICC 1332 July 15, 1940 (Item 4540-B, 3rd Revised Page...243, Correction No. 871, Effective May 1, 1941).
J.P. HAYNES X 148 ICC 1413 March 18, 1942.

NOTE: Vernon is within Los Angeles tariff switching limits. See Southern Pacific Company Terminal Tariff No. 230-J, ICC 4574, Effective April 9, 1927 (Item 4910-K, Thirty-third Revised Page...147, Correction No. 3100, Effective Dec. 25, 1942; and Thirty-fourth Revised Page...147, Correction No. 3113, Effective Jan. 26, 1943).

BENZOL SHIPMENTS FROM SEATTLE, WASHINGTON, TO VERNON, CALIFORNIA, VIA NORTHERN PACIFIC
RAILWAY COMPANY TO EAST PORTLAND, OREGON, THENCE VIA SOUTHERN PACIFIC COMPANY.

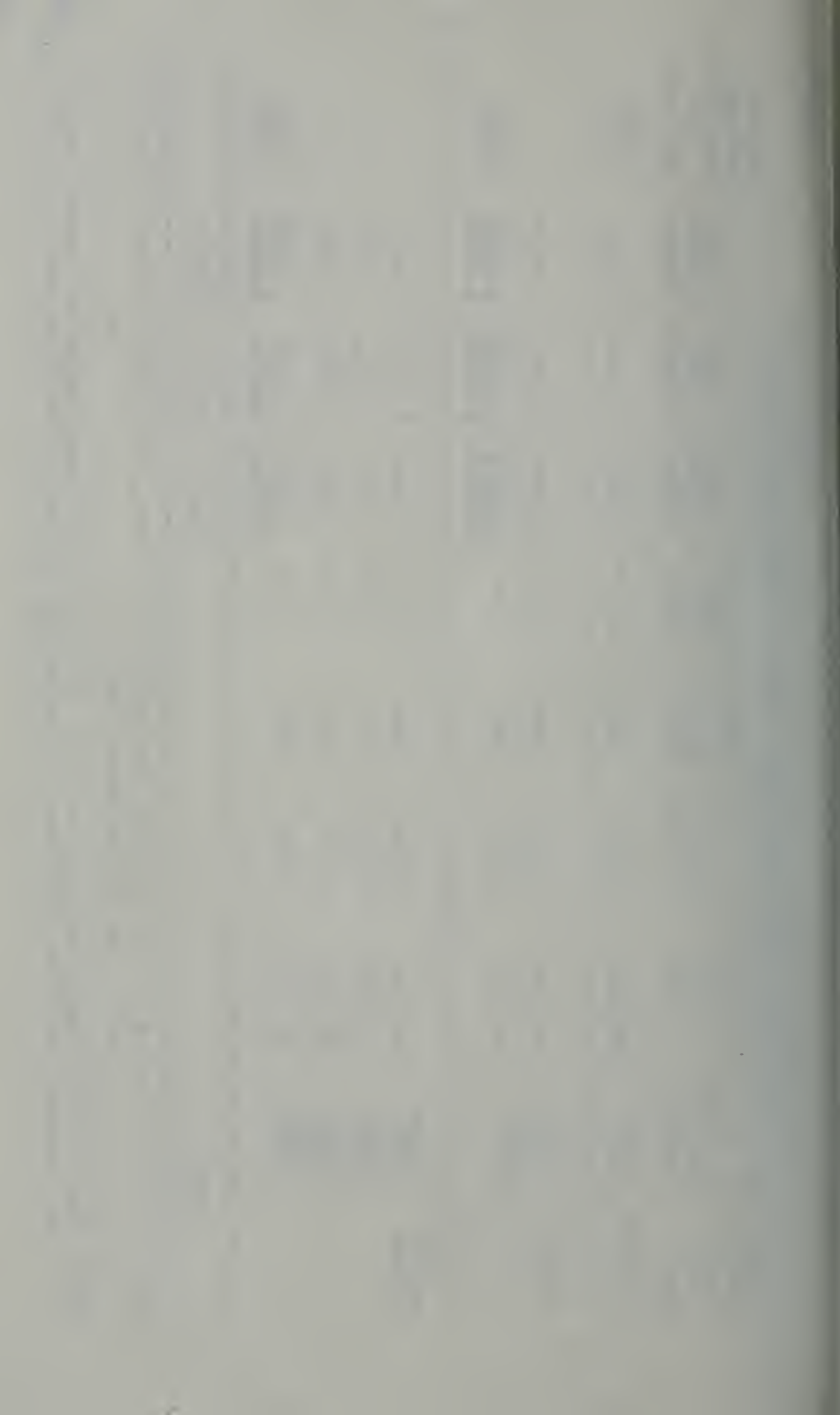
S.P.Co.

Bill Date and Number	Car Initials and Number	Delivered On or About	Weight of Shipment (Pounds)	Applicable Tariff Rate Per Cwt.	Amount Billed (Dollars)	Amount Paid (Dollars)	Balance Claimed (Dollars)	Reference to Settlement Check Number and Date Received
Mar. 1943 F 207375	UOCX 10239	3/13/43	74300	\$.93 *	\$ 690.99	\$ 410.27	\$ 280.72	935584 5/19/43
Mar. 1943 F 208751	ROX 823 ROX 822	3/18/43 3/18/43	61060 61100	\$.93 * .93 *	\$ 567.86 <u>\$1,136.09</u>	\$ 337.17 <u>\$ 674.55</u>	\$ 230.69 <u>\$ 461.54</u>	935584 5/19/43
Apr. 1943 F 212564	ROX 139 ROX 205 ROX 214 ROX 142	3/18/43 3/19/43 3/21/43 3/23/43	75100 75060 75920 74900	\$.93 * .93 * .93 * .93 *	\$ 698.43 698.06 706.06 <u>\$2,799.12</u>	\$ 414.69 414.46 419.22 <u>\$1,661.95</u>	\$ 283.74 283.60 286.84 <u>\$1,137.17</u>	1150904 5/24/43
Totals					\$4,626.20	\$2,745.77	\$1,879.43	

*Tariff References: FPTS 1-S ICC 1352 July 15, 1940 (Item 4640-B, 3rd Revised Page...243, Correction No. 871, Effective May 6, 1941).

J.P. 24222 N 148 ICC 1413 March 18, 1942.

NOTE: Vernon is within Los Angeles tariff switching limits. See Southern Pacific Company Terminal Tariff No. 230-J, ICC 4574, Effective April 9, 1927 (Item 4910-K, Thirty-fourth Revised Page...147, Correction No. 3113, Effective Jan. 26, 1943).



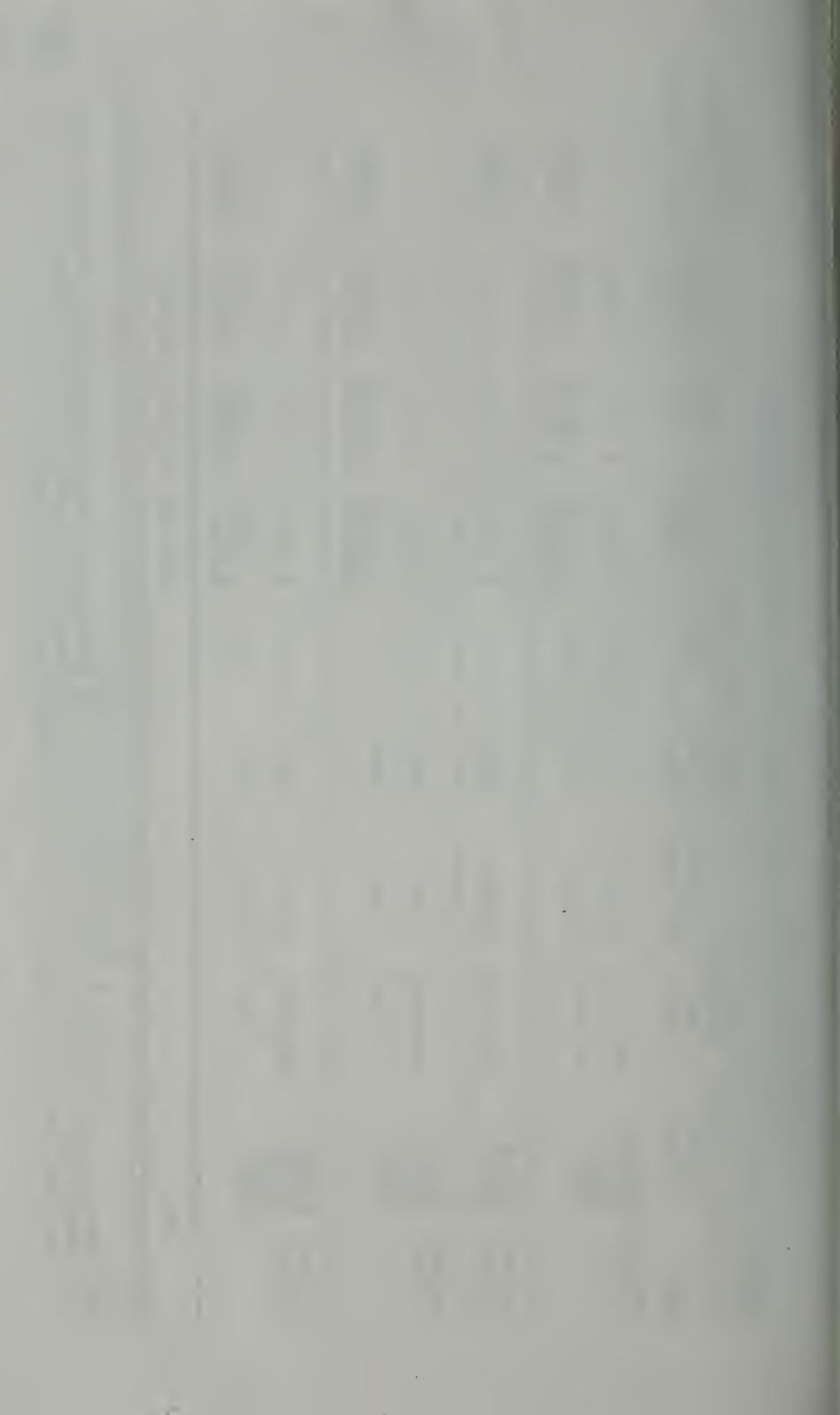
**BENZOL SHIPMENTS FROM SEATTLE, WASHINGTON, TO VERNON, CALIFORNIA, VIA NORTHERN PACIFIC
RAILWAY COMPANY TO EAST PORTLAND, OREGON, THENCE VIA SOUTHERN PACIFIC COMPANY.**

S.P.Co. Bill Date and Number	Bill of Lading Date and Number	Car Initials and Number	Delivered On or About	Weight of Shipment (Pounds)	Applicable Tariff Rate Per Cwt.	Amount Billed (Dollars)	Amount Paid (Dollars)	Balance Claimed (Dollars)	Reference to Settlement Check Number and Date Received
Apr. 1943 F 212906	<u>3/15/43</u> 319615	USQX 10464	3/26/43	75900	\$.93 *	\$ 705.87	\$ 419.10	\$ 286.77	
	<u>3/13/43</u> 319614	" 10267	3/29/43	76100	.93 *	707.73 <u>\$1,413.60</u>	420.21 <u>\$ 839.31</u>	287.52 <u>\$ 574.29</u>	1150985 5/24/43
Apr. 1943 F 213348	<u>3/11/43</u> 319611	ROX 218	3/21/43	74200	\$.93 *	\$ 590.06	\$ 409.72	\$ 280.34	1150985 5/24/43
Apr. 1943 F 213411	<u>3/25/43</u> 319617	USQX 10266	4/2/43	75600	\$.93 *	\$ 703.08	\$ 417.45	\$ 285.63	
	<u>3/25/43</u> 319616	" 10265	4/2/43	75800	.93 *	704.94 <u>\$1,408.02</u>	418.55 <u>\$ 836.00</u>	286.39 <u>\$ 572.02</u>	1151553 5/24/43
Apr. 1943 F 214194	<u>3/30/43</u> 319618	USQX 10464	4/11/43	75880	\$.93 *	\$ 705.66	\$ 418.99	\$ 286.69	
	<u>3/30/43</u> 319619	" 10485	4/11/43	75700	.93 *	704.01 <u>\$1,409.69</u>	418.00 <u>\$ 836.99</u>	286.01 <u>\$ 572.70</u>	1151847 5/27/43
Totals									\$4,921.37 \$2,922.02 \$1,999.35

Tariff References: PFTB 1-S ICC 1352 July 15, 1940 (Item 4640-B, 3rd Revised Page...243, Correction No. 871, Effective May 6, 1941).

J.P. RATES X 148 ICC 1413 March 18, 1942.

NOTE: Vernon is within Los Angeles tariff switching limits. See Southern Pacific Company Terminal Tariff No. 250-J, ICC 4574, Effective April 9, 1927 (Item 4810-K, Thirty-fourth Revised Page...147, Correction No. 3113, Effective Jan. 26, 1943; and Thirty-fifth Revised Page...147, Correction No. 3129, Effective Mar. 25, 1943).



REVOL SHIPMENTS FROM SEATTLE, WASHINGTON, TO VERNON, CALIFORNIA, VIA NORTHERN PACIFIC RAILWAY COMPANY TO EAST PORTLAND, OREGON, THENCE VIA SOUTHERN PACIFIC COMPANY.

G. F. Co. Bill Date and Number	Bill of Lading Date and Number	Car Initials and Number	Weight of Shipment (Pounds)	Applicable Tariff Rate Per Cwt.	Amount Billed (Dollars)	Amount Paid (Dollars)	Balance Claimed (Dollars)	Reference to Settlement Check Number and Date Received
July, 1943 F 234510	5/17/43 319620	GATX 24374	58900	\$.88 *	\$ 518.67	\$ 307.96	\$ 210.71	1809627 9/14/43
July, 1943 F 234369	5/4/43 319624	UOXX 8040	59900	\$.88 *	\$ 527.12	\$ 312.97	\$ 214.15	
	6/22/43 319691	GATX 4040	58920	.88 *	518.50 <u>\$1,045.62</u>	307.85 <u>\$ 620.82</u>	210.65 <u>\$ 424.80</u>	1811189 9/24/43
July, 1943 F 234370	7/1/43 319694	UOXX 10243	73100	\$.88 *	\$ 643.28	\$ 381.05	\$ 262.23	
	7/1/43 319693	GATX 14140	58820	.88 *	517.62	307.32	210.30	
	7/1/43 319692	CYCX 499	59440	.88 *	523.07 <u>\$1,683.97</u>	310.56 <u>\$ 998.93</u>	212.51 <u>\$ 685.04</u>	1811189 9/24/43
Totals					\$3,248.26	\$1,937.71	\$1,320.55	

*Tariff Reference: YTTB 1-S ICC 1352 July 15, 1940 (Item 4640-B, 3rd Revised Page...243, Correction No. 871, Effective May 5, 1941).

NOTE: Vernon is within Los Angeles tariff switching limits. See Southern Pacific Company Terminal Tariff No. 230-J, ICC 4574, Effective April 9, 1927 (Item 4810-K, Thirty-fifth Revised Page...147, Correction No. 3129, Effective Mar. 25, 1943; and Thirty-sixth Revised Page...147, Correction No. 3150, Effective Jun. 8, 1943).

S. P. Co. Bill Date and Number	Bill of Lading Date and Number	Car Initials and Number	Delivered On or About	Weight of Shipment (Pounds)	Applicable Tariff Rate Per Cwt.	Amount Billed (Dollars)	Amount Paid (Dollars)	Balance Claimed (Dollars)	Check Number and Date Received
Aug. 1943 F 241295	7/5/43 319695	UOCX 8051	7/17/43	61100	\$.88 *	\$ 537.68	\$ 319.75	\$ 217.93	
	7/5/43 319696	" 8047	7/16/43	59330	.88 *	522.02 <u>\$1,059.70</u>	310.43 <u>\$ 630.18</u>	211.59 <u>\$ 429.52</u>	1811189 9/24/43
Aug. 1943 F 245886	7/10/43 319697	GATX 4040	7/23/43	59000	\$.88 *	\$ 519.20	\$ 308.27	\$ 210.93	1813181 10/2/43
Sept. 1943 F 249883	7/24/43 319699	GYCX 499	8/4/43	59160	\$.88 *	\$ 530.61	\$ 309.10	\$ 211.51	
	7/24/43 319698	GATX 14140	8/7/43	58700	.88 *	516.56 <u>\$1,037.17</u>	306.71 <u>\$ 615.81</u>	209.85 <u>\$ 421.36</u>	1966581 10/26/43
Sept. 1943 F 256695	8/18/43 319700	GYCX 499	8/31/43	59180	\$.88 *	\$ 530.78	\$ 309.21	\$ 211.57	1971865 11/23/43
Oct. 1943 F 363292	9/10/43 319743	GATX 91042	9/23/43	58220	\$.88 *	\$ 512.34	\$ 304.19	\$ 208.15	1971865 11/23/43
Totals						\$3,649.19	\$2,167.66	\$1,481.53	

Tariff Reference: FFB 1-S ICC 1352 July 15, 1940 (Item 4640-B, 3rd Revised Page...243, Correction No. 871, Effective May 6, 1941).

NOTE: Vernon is within Los Angeles tariff switching limits. See Southern Pacific Company Terminal Tariff No. 230-J, ICC 4574, Effective April 9, 1927 (Item 4810-K, Thirty-sixth Revised Page...147, Correction No. 3150, Effective Jun. 8, 1943).

*Tariff Reference: FTB 1-S ICC 1352 July 15, 1940 (Item 4640-B, 3rd Revised Page...243, Correction No. 871, Effective May 6, 1941).

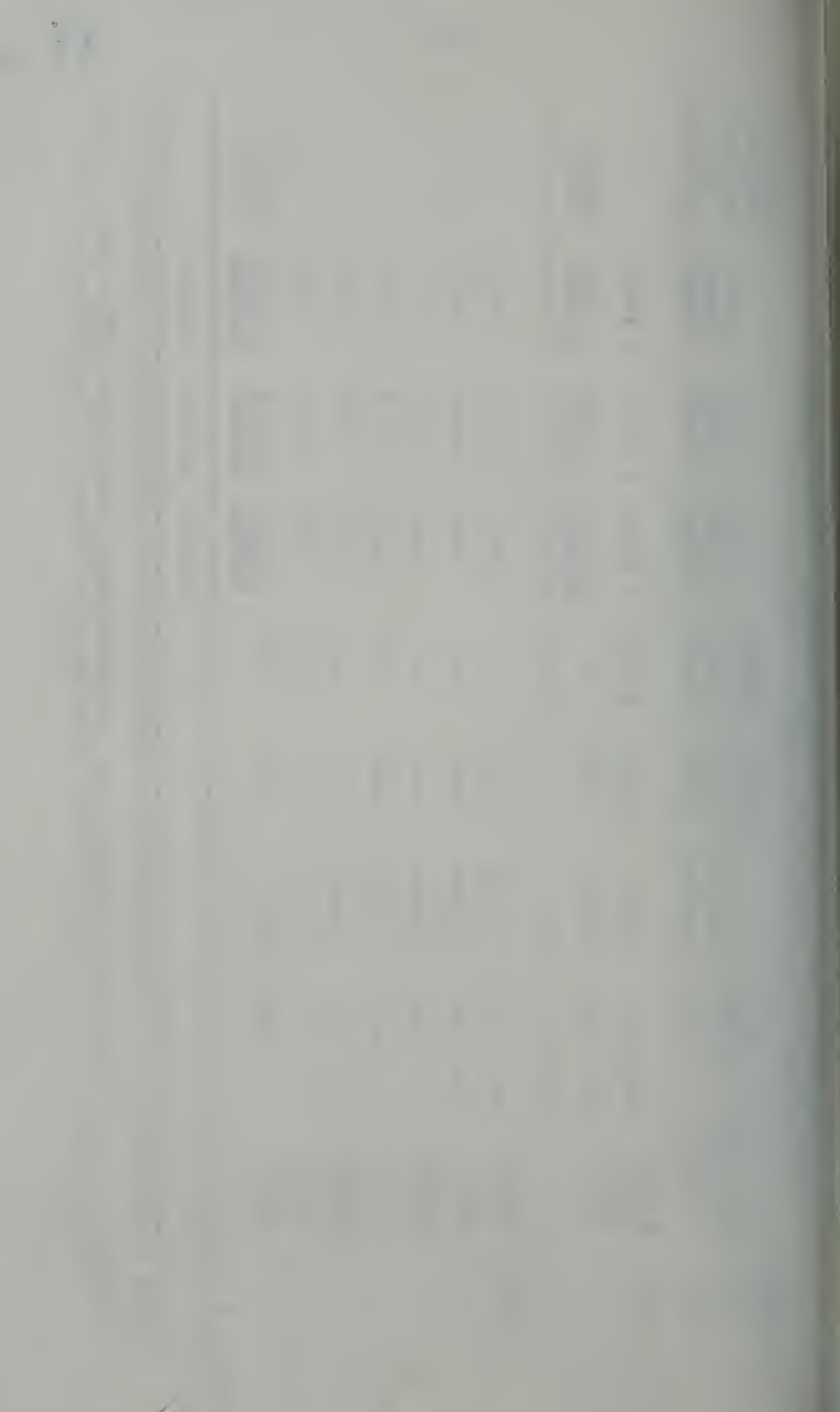
NOTE: Vernon is within Los Angeles tariff switching limits. See Southern Pacific Company Terminal Tariff No. 230-J, ICC 4574, Effective April 9, 1927 (Item 4810-K, Thirty-sixth Revised Page...147. Correction No. 3150, Effective Jun. 8, 1943).

BENZOL SHIPMENTS FROM SEATTLE, WASHINGTON, TO VERNON, CALIFORNIA, VIA NORTHER PACIFIC RAILWAY COMPANY TO EAST PORTLAND, OREGON, THENCE VIA SOUTHERN PACIFIC COMPANY.

S.P. Co. Bill Date and Number	Bill of Lading Date and Number	Car Initials and Number	Delivered On or About	Weight of Shipment (Pounds)	Applicable Tariff Rate Per Cwt.	Amount Billed (Dollars)	Amount Paid (Dollars)	Balance Claimed (Dollars)	Reference to Settlement Check Number and Date Received
Oct. 1943 P 365145	9/16/43 319745	CATX 14140	10/2/43	58900	\$.88 *	\$ 518.32	\$ 307.74	\$ 210.58	
	9/15/43 319744	CYCX 499	10/2/45	59300	.88 *	521.84 <u>\$1,040.16</u>	309.84 <u>\$ 617.58</u>	212.00 <u>\$ 422.58</u>	21565.8 12/10/43
Nov. 1943 P 375314	10/15/43 319754	CYCX 499	10/26/43	53440	\$.88 *	\$ 523.07	\$ 310.57	\$ 212.50	
	10/5/43 319746	CATX 4040	10/19/43	53960	.88 *	518.85	308.06	210.79	
	10/5/43 319747	" 21374	10/20/43	58900	.88 *	518.32	307.75	210.57	
	10/14/43 319750	" 38796	10/25/43	59880	.88 *	526.94	312.37	214.07	
	10/15/43 319753	" 14140	10/26/43	59280	.88 *	521.66	307.73	213.93	
	10/9/43 319749	" 35877	10/23/43	74680	.88 *	657.18	392.50	264.96	
	10/9/43 319748	" 10907	10/23/43	74360	.88 *	654.37 <u>\$3,920.39</u>	388.52 <u>\$2,327.70</u>	265.85 <u>\$1,592.69</u>	2160801 1/7/44
Totals									
						\$4,960.55	\$2,945.28	\$2,015.27	

*Tariff Reference: PFTB 1-S ICC 1352 July 15, 1940 (Item 4640-B, 3rd Revised Page...243, Correction No. 871, Effective May 6, 1941).

NOTE: Vernon is within Los Angeles tariff switching limits. See Southern Pacific Company Terminal Tariff No. 230-J, ICC 4574, Effective April 9, 1927 (Item 4810-K, Thirty-sixth Revised Page...147, Correction No. 3150, Effective Jun. 8, 1943).



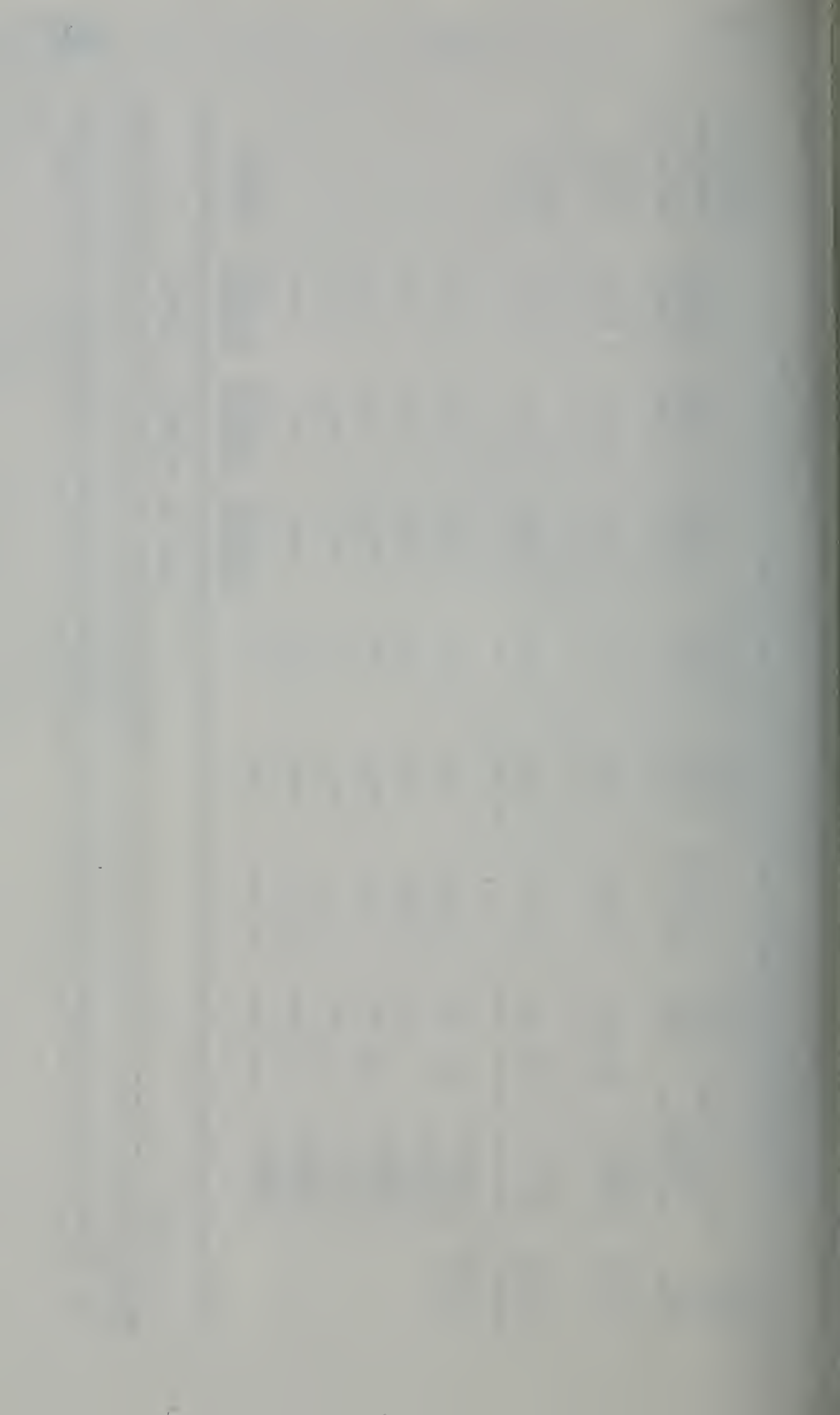
BENZOL SHIPMENTS FROM SEATTLE, WASHINGTON, TO VERNON, CALIFORNIA, VIA NORTHERN PACIFIC
RAILWAY COMPANY TO EAST PORTLAND, OREGON, THENCE VIA SOUTHERN PACIFIC COMPANY.

S.P.Co. Bill Date and Number	Bill of Lading Date and Number	Car Initials and Number	Delivered On or About	Weight of Shipment (Pounds)	Applicable Tariff Rate Per Cwt.	Amount Billed (Dollars)	Amount Paid (Dollars)	Balance Claimed (Dollars)	Reference to Settlement Check Number and Date Received
Nov. 1943 F 376519	10/30/43 319731	GATX 24374	11/13/43	59420	\$.88 *	\$ 522.90	\$ 310.47	\$ 212.43	2160801 1/7/44
Nov. 1943 F 377533	11/2/43 319733	GATX 4040	11/15/43	59320	\$.88 *	\$ 522.02	\$ 309.94	\$ 212.08	2160801 1/7/44
Nov. 1943 F 378665	10/14/43 319731 10/23/43 319759 10/21/43 319753 10/21/43 319757 10/23/43 319750 10/19/43 319756	CDL 838 " 756 GATX 2759 CJCK 8974 CJCK 1124 GATX 75598	10/30/43 11/3/43 11/2/43 11/2/43 11/3/43 11/4/43	50180 59360 60100 59140 73900 74380	\$.88 * \$.88 * \$.88 * \$.88 * \$.88 * \$.88 *	\$ 529.53 522.37 528.88 520.43 650.32 654.54 33,406.12	\$ 314.43 310.15 314.02 309.00 386.12 388.63 32,022.35	\$ 215.15 212.22 214.86 211.43 264.20 265.91 \$1,383.77	2160801 1/7/44

Totals \$1,451.04 \$2,642.76 \$1,808.28

Tariff Reference: VFTB I-S ICC 1352 July 15, 1940 (Item 4640-B, 3rd Revised Page...243, Correction No. 871, Effective May 6, 1941).

NOTE: Vernon is within Los Angeles tariff switching limits. See Southern Pacific Company Terminal Tariff No. 230-J, ICC 4574, Effective April 9, 1927 (Item 4810-K, Thirty-sixth Revised Page...147, Correction No. 313C, Effective Jun. 8, 1943).

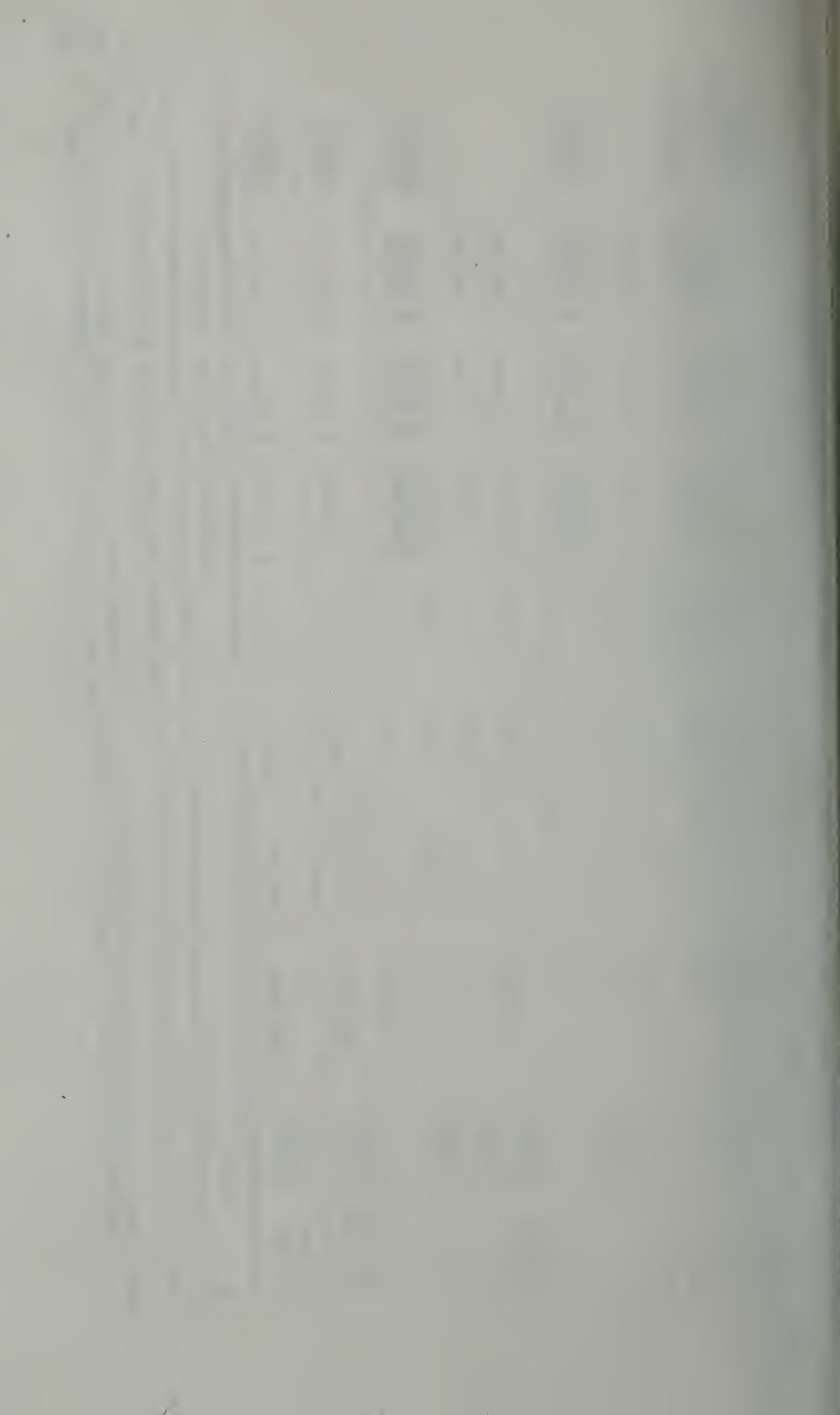


BEVOL SHIPMENTS FROM SEATTLE, WASHINGTON, TO VERNON, CALIFORNIA, VIA NORTHERN PACIFIC RAILWAY COMPANY TO EAST PORTLAND, OREGON, THENCE VIA SOUTHERN PACIFIC COMPANY.

S.P. Co. Bill Date and Number	Bill of Lading Date and Number	Car Initials and Number	Delivered On or About	Weight of Shipment (Pounds)	Applicable Tariff Rate Per Cwt.	Amount Billed (Dollars)	Amount Paid (Dollars)	Balance Claimed (Dollars)	Reference to Settlement Check Number and Date Received
Nov. 19/23 F 378731	10/19/23 319755 10/14/23 319752	GATX 28270 " 11626	11/2/23 11/6/23	59960 77740	\$.88 * .88 *	\$ 527.65 <u>\$1,211.76</u>	\$ 313.28 <u>\$ 406.18</u> <u>\$ 719.46</u>	\$ 214.37 277.93 <u>\$ 492.30</u>	2161186 1/8/24
Dec. 19/23 F 381786	11/15/23 319766 11/15/23 319765 11/16/23 319767	GATX 18553 " 18512 " 19655	11/27/23 11/27/23 11/29/23	74315 74069 74030	\$.88 * .88 * .88 *	\$ 653.97 651.81 <u>\$1,957.24</u>	\$ 383.29 387.00 <u>\$1,163.09</u>	\$ 255.68 264.81 <u>\$ 795.15</u> <u>264.66</u> <u>\$ 795.15</u>	2164206 2/1/24
Dec. 19/23 F 384078	11/29/23 319769	GATX 27717	12/9/23	73401	\$.88 *	\$ 645.93	\$ 383.51	\$ 262.42	2164206 2/1/24
Dec. 19/23 F 384563	11/27/23 319766	GATX 24374	12/9/23	59216	\$.88 *	\$ 521.10	\$ 309.40	\$ 211.70	2164206 2/1/24
Totals						\$4,336.03	\$2,572.46	\$1,761.57	

*Tariff Reference: FFB 1-S, ICC 1352 July 15, 1940 (Item 4610-B, 3rd Revised Page...243, Correction No. 871, Effective May 6, 1941).

NOTE: Vernon is within Los Angeles tariff switching limits. See Southern Pacific Company Terminal Tariff No. 230-J, ICC 4574, Effective April 9, 1927 (Item 4310-K, Thirty-sixth Revised Page...147, Correction No. 3150, Effective Jun. 8, 1943).



SUMMARY

Sheet 14

	Amount Billed	Amount Paid	Balance Claimed
Sheet 1	\$ 6,112.14	\$ 3,629.04	\$ 2,483.10
Sheet 2	4,009.98	2,380.88	1,629.10
Sheet 3	3,011.70	1,788.18	1,223.52
Sheet 4	5,436.97	3,228.14	2,208.83
Sheet 5	3,860.99	2,292.43	1,568.56
Sheet 6	4,111.72	2,441.30	1,670.42
Sheet 7	4,626.20	2,746.77	1,879.43
Sheet 8	4,921.37	2,922.02	1,999.35
Sheet 9	3,248.26	1,927.71	1,320.55
Sheet 10	3,649.19	2,167.66	1,481.53
Sheet 11	4,960.55	2,945.28	2,015.27
Sheet 12	4,451.04	2,642.76	1,808.28
Sheet 13	4,336.03	2,574.46	1,761.57
Grand Totals.....	\$56,736.14	\$33,686.63	\$23,049.51

[Endorsed]: Filed July 12, 1944.

[Title of District Court and Cause.]

ANSWER

Comes now the defendant, Defense Supplies Corporation, a corporation, and answers the complaint on file herein as follows: [22]

FIRST DEFENSE

I.

Defendant alleges that the complaint and Counts One and Two thereof and each of them fail to state a claim against defendant upon which relief can be granted.

SECOND DEFENSE

II.

Defendant admits the averments of paragraph I of the complaint, but further alleges that the action arises under Section 321 of Part II, Title III, of the Transportation Act of 1940 (54 Stat. 954; 49 U.S.C. 65) and under the Act of Congress of June 7, 1924 (43 Stat. 486; 10 U.S.C. 1375), and the matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars (\$3,000).

III.

Defendant admits the averments of paragraph II of the complaint.

IV.

Defendant admits the averments of paragraph III of the complaint, but further alleges that defendant was created as an instrumentality of the United States Government in order to aid the Government in its national defense program, and for the purposes of producing, acquiring, carrying, selling or otherwise dealing in strategic and critical materials as defined by the President, and of purchasing and producing materials and supplies for the manufacture of strategic and critical materials, and any other articles and supplies necessary to the national defense.

V.

Defendant admits the averments of paragraph IV of the [23] complaint, save and except the averments thereof respecting the tariff rates applicable to the transportation of the shipments involved, and

denies that the exhibit annexed to and made a part of the complaint and referred to in paragraph IV thereof shows the applicable tariff rate and reference to the lawfully published and effective tariffs containing the freight rate or rates applicable to the transportation of the shipments involved and conditions in connection there with.

In connection with the foregoing denial and further answering said paragraph IV, defendant alleges that said benzol was motor benzol which was purchased and acquired by defendant from Seattle Gas Company f.o.b. tank cars Seattle, Washington, prior to the transportation thereof as alleged in the complaint, and was owned by and the property of defendant at all of the times therein mentioned; that motor benzol, and the several materials into which said motor benzol was processed and manufactured as hereinafter alleged, were at all of the times mentioned in the complaint and now are defined by the President of the United States as strategic and critical materials; that said motor benzol was so purchased, acquired and caused to be transported by defendant on the recommendation and request of the War Production Board and for the sole and exclusive purpose of establishing and maintaining at Vernon, California, a stock-pile thereof allocated for defense purposes; that said stockpile was necessary to the national defense in order to provide and accumulate supplies of motor benzol to be processed and refined into refined benzol, which was required for use in the manufacture and production of cumene and ethyl-benzine, which in turn were re-

quired for use in the manufacture and production of 100-octane aviation gasoline and of styrene, a component of [24] Buna-S synthetic rubber, which said aviation gasoline and synthetic rubber were and are required and necessary for military and naval uses of the United States, and from and after November, 1943, said motor benzol purchased, acquired and transported as aforesaid was so processed and manufactured; that said benzol was military and naval property of the United States within the meaning of said Section 321 of the Transportation Act of 1940, and said shipments and transportation thereof were movements for military and naval and not for civil use within the meaning of said section; that said shipments were made over railroads which were aided in their construction by grants of land under land grant acts, and the charges for said transportation at the rates and based on the tariffs alleged and referred to in paragraph IV of the complaint were subject to land grant deductions as provided by law.

VI.

Defendant admits the averments of paragraph V of the complaint, but further alleges that the tariffs and rates therein alleged were for transportation for the public at large, and that defendant was and is entitled, as hereinbefore alleged, to land grant deductions from the charges made by plaintiff for the transportation of said benzol, which said charges were the full commercial charges based on said tariffs and rates applicable to the public at large.

VII.

Defendant admits the averments of paragraph VI of the complaint, save and except the averments thereof that the bills presented by plaintiffs to defendant for the transportation charges on said shipments were based upon the lawful and applicable rate or rates and that there is any unpaid balance [25] of charges for said transportation. In this connection defendant alleges that said bills and rates were subject to land grant deductions and allowances as hereinbefore alleged, aggregating the sum of \$23,049.51, being the total amount deducted and withheld by defendant from its payments to plaintiff and being the difference between the total amount of the bills presented by plaintiff to defendant and the payments made by defendant to plaintiff, as alleged in the complaint and shown in the exhibit annexed thereto and made a part thereof; and defendant denies that there is any unpaid balance of charges for said transportation.

VIII.

Defendant denies each and every averment of paragraph VII of the complaint, and further denies that plaintiff is entitled to recover any other amount from defendant, or at all.

IX.

Defendant admits the averments of paragraph VIII of the complaint, but further alleges that the action arises under the Act of Congress of June 7th, 1924 (43 Stat. 486; 10 U.S.C. 1375).

X.

Answering paragraph IX of the complaint, de-

fendant refers to and hereby incorporates by reference as fully as though here repeated, paragraphs III, IV, V, and VI of this Answer, and all of the allegations contained in said paragraphs.

XI.

Defendant admits the averments of paragraph X of the complaint, save and except the averments thereof that the bills presented by plaintiff to defendant were based upon the lawful [26] and applicable rate or rates and that there is any unpaid balance of charges for said transportation. In this connection defendant alleges that said bills and rates were subject to land grant deductions and allowances as hereinbefore alleged, aggregating the sum of \$23,049.51, being the total amount deducted and withheld by defendant from its payments to plaintiff and being the difference between the total amount of the bills presented by plaintiff to defendant and the payments made by defendant to plaintiff, as alleged in the complaint and shown in the exhibit annexed thereto and made a part thereof; and defendant denies that there is any unpaid balance of charges for said transportation.

XII.

Defendant admits the averments of paragraph XI of the complaint.

XIII.

Defendant denies each and every averment of paragraph XII of the complaint, and further denies that plaintiff is entitled to recover any other amount from defendant, or at all.

Wherefore, defendant prays that plaintiff take nothing by its complaint herein and that defendant have judgment for its costs and for such other and further relief as to the court may seem meet and proper.

/s/ THEODORE R. MEYER,
/s/ R. L. MILLER,
/s/ JOSEPH F. HOGAN,
/s/ BROBECK, PHLEGER &
HARRISON,

Attorneys for Defendant. [27]

Copy of the foregoing answer received this 9th day of January, 1945.

C. W. DURBROW,
C. O. AMONETTE,
CHARLES W. BURKETT, Jr.
Attorneys for Plaintiff.

[Endorsed]: Filed Jan. 10, 1945. [28]

[Title of District Court and Cause.]

STIPULATION OF FACTS

It is hereby stipulated by and between the parties hereto by their attorneys, that the following evidentiary facts are true and they and the exhibits hereinafter made a part hereof are to be considered in evidence in this action; provided that both parties shall have the right to offer other and further evidence not inconsistent therewith, and may bring to the attention of the Court any facts of which the Court may take judicial notice. [29]

1. Plaintiff is now, and was during all of the times hereinafter mentioned, a corporation duly created, organized and existing under laws of the State of Kentucky, authorized to do and doing business in the State of California and in other states, and, as such corporation was, during all of said times, engaged as a common carrier by railroad in the transportation of persons and property for hire in interstate commerce over its lines and in participation with other common carriers by railroad in and through various states of the United States.

2. Defendant is now, and was during all of the times hereinafter mentioned, a corporation duly created by the Reconstruction Finance Corporation at the request of the Federal Loan Administrator with the approval of the President, pursuant to authority contained in Section 5d of the Reconstruction Finance Corporation Act, as amended, with its principal office located in the City of Washington, District of Columbia. At all of said times defendant did and now does business and had and now has an agent and representative in the City and County of San Francisco, in the Northern District of California. A certified copy of its charter, dated August 29, 1940, and a certified copy of an amendment thereto, dated February 15, 1941, and an amendment thereto, dated July 9, 1941, were duly filed with the Secretary of the Senate and the Clerk of the House of Representatives, and were published in the Federal Register, as contemplated by 15 U.S.C., Sec. 606b(3). True copies of de-

fendant's charter, as amended, and by-laws, as in force and effect during all of the times herein mentioned, marked Exhibits A and B, respectively, are attached hereto and made a part hereof. At all of the times material to this action the accounts of defendant were not audited, settled, or adjusted by the General Accounting Office of the United States.

3. On April 7, 1942, the Executive Committee of defendant adopted the following resolution: [30]

"Whereas, the War Production Board did on April 2, 1942, by its letter of that date, recommend to this Corporation that it purchase 50,000,000 gallons of motor benzol for the purpose of storing such benzol and creating a stockpile thereof;

"Resolved First, that this Corporation purchase and place in storage not to exceed 50,000,000 gallons of motor benzol at a price not in excess of ten cents per gallon.

"Resolved Second, that the President or any Vice President be and hereby is authorized:

"1. To enter into such agreements, approved by the General Counsel or Counsel designated by him, as may be necessary to carry out the provisions of this resolution and the purchase referred to;

"2. To make (or designate a person or persons to make) such other arrangements as may be deemed necessary or appropriate, including but not limited to transportation, insurance, handling, storage, protection and disposition of such motor benzol.

"Resolved Third, that the Treasurer or an Assistant Treasurer be and hereby is authorized to take such action as may be necessary:

"1. To carry into effect any agreements and arrangements made pursuant to the foregoing authority;

"2. To disburse such funds of the Corporation as are required to be expended pursuant to any such agreements and arrangements;

"3. To make such other disbursements as may be approved by the President or a Vice President."

4. Said resolution was amended by resolution adopted by the Executive Committee of defendant on July 18, 1942, by striking from paragraph 2 in Resolved Second thereof the words "and disposition of such motor benzol," and substituting therefor the following: [31] " , processing and disposition of such motor benzol and by-products resulting therefrom."

5. On September 21, 1942, the Executive Committee of defendant adopted the following resolution, further amending said resolution adopted on April 7, 1942:

"Resolved First, That, in connection with the resolution adopted by this Corporation on April 7, 1942, as amended, authorizing the purchase and storage of not to exceed 50,000,000 gallons of motor benzol at a price not in excess of 10c per gallon, the action heretofore taken whereby:

(a) Contracts were executed for the purchase of motor benzol at prices in excess of 10c per gallon; and

(b) Benzol was purchased containing a percentage of gasoline, the benzol being recoverable, be and hereby is ratified and confirmed.

“Resolved Second, that said resolution adopted by this Corporation on April 7, 1942, as amended, be and hereby is further amended by striking the Resolved First clause thereof and inserting in lieu thereof the following:

“ ‘Resolved First, That this Corporation purchase, store, and arrange for further processing and sale of not to exceed 50,000,000 gallons of motor benzol at a price not in excess of 16c per gallon.’ ”

6. Further resolutions were adopted by the Executive Committee of defendant from time to time, further amending said resolution adopted on April 7, 1942, by increasing the quantity of benzol to be purchased and stored by defendant and for which defendant was to arrange for further processing and sale, and by [32] increasing the prices which defendant was authorized to pay for benzol purchased.

7. The letter of the War Production Board dated April 2, 1942, referred to in the foregoing resolution adopted by the Executive Committee of defendant on April 7, 1942, and the memorandum attached to said letter, were in words and figures as follows:

“War Production Board, Washington, D. C.

April 2, 1942

In Reply Refer To: Room 2001 Tempo “R.”

Mr. W. L. Clayton, Special Assistant to the Secretary, Department of Commerce, 811 Vermont Avenue, Washington, D. C.

Re: Benzene—Stockpile

Dear Will:

Attached is a copy of memorandum dated March

31st from Dr. E. W. Reid, Chief of the Chemicals and Allied Products Branch of the War Production Board, recommending purchase of a stockpile of 50 million gallons of motor grade Benzol.

This office concurs in the recommendation for the reasons outlined in Dr. Reid's memorandum.

If you require any further information on this subject, we shall be glad to furnish it.

Very sincerely,
/s/ W. Y. ELLIOTT, Chief,
Stockpile and Shipping
Branch."

Attachment. [33]

(Memorandum)
"War Production Board
Washington, D. C.

March 31, 1942.

To: Dr. William Y. Elliott.

From: E. W. Reid.

Subject: Stockpile of Benzene.

Source of Supply: Domestic production from by-product coke ovens.

Imports 1941: Negligible.

Expected Imports, 1942: Negligible.

Expected Domestic Production: Estimated current rate 160 million gallons per year. Estimated rate by end of 1943, 180 million gallons per year.

Uses, Present: Manufacture of chemicals, notably phenol and aniline, both of which are essential to the war program. Uses in motor fuel, to the extent of about 100 million gallons per year (this use is non-essential).

Future: Essential uses in the synthetic rubber program for manufacture of styrene and, to a lesser extent, for butadiene, eventually requiring 80 to 100 million gallons per year for the 700,000 ton rubber program; also essential use as an addition to 100 octane gasoline, either as benzol or as a derivative of benzol. This latter use has only recently assumed significance, but may become extensive.

Annual Essential Consumption: 60 million gallons per year at present, becoming by the spring of 1943 the complete production of the country (around 170 to 180 million gallons per year). The demand may well exceed producing capacity, particularly if present plans for use in 100 octane gasoline develop as anticipated.

Control Orders: An order prohibiting the use of benzol as motor fuel is being drafted, and a second is planned which will place benzene under allocation.

Statement of Recommendation: Grades to Be Purchased: Since the synthetic rubber plants will be built to use impure benzol, now marketed under the term motor benzol, and since this grade constitutes two-thirds of present production, the major stockpile should be made up from the ordinary motor grade. This should probably be supplemented by a stockpile of nitration grade benzol if it develops that the capacity to produce nitration grade is in excess of demands.

Suggestions as to the Best Way to Handle Purchases: Purchases should probably be made through Defense Supplies Corporation. The ben-

zol will be released from this stockpile for operation of synthetic rubber plants [35] and perhaps also for incorporation in 100 octane gasoline.

Percentage of Stockpile Recommended for Release to Industry: Probably none.

Percentage of Stockpile Recommended for Permanent Stockpile: Probably none.

Reasons for Recommendations: It seems evident that the essential demand for benzol in 1943 will exceed production. There is a tremendous amount of benzol (100 million gallons per year) now going into motor fuel. It is imperative that this practice be stopped at once so that this benzol will be available for synthetic rubber and aviation gasoline. Currently it cannot be incorporated in large amounts in aviation gasoline because the aircraft equipment, such as leak-proof tanks, has not yet been fully converted to a type which will resist action of benzol blends. This conversion is expected to be effectively completed by July, 1942, at which time considerable benzol can presumably be used in 100 octane fuel.

It is thus obvious that the months immediately ahead of us represent an extremely favorable time for building a considerable stockpile which will be sorely needed in 1943.

For the above stated reasons we recommend that the Defense Supplies Corporation of the R. F. C. purchase at least 50 million gallons of motor grade benzol as quickly as practicable to be allocated for defense purposes. We would emphasize that most of the excess supply for such a stockpile [36] will be produced before August, 1942, before the avia-

tion gasoline and synthetic rubber demands have built up, and that immediate action is therefore imperative.

/s/ E. W. REID,

Chief, Chemicals and Allied
Products Branch."

8. The recommendation in said letter for purchase by defendant of a stockpile of 50,000,000 gallons of motor grade benzol was subsequently increased to 65,000,000 gallons by letter dated June 4, 1943, and memorandum attached thereto dated May 27, 1943, in words and figures as follows:

"War Production Board, Washington, D. C.

June 4, 1943.

In Reply Refer to: Stockpiling and Transportation Division, Room 2650—SSB.

Honorable Jesse Jones, Secretary of Commerce, Department of Commerce, 811 Vermont Ave., N. W., Room 1210, Washington, D. C.

Re: Stockpile Recommendation Benzene (Benzol)

Dear Mr. Jones:

You will find attached a copy of memorandum from Dr. D. P. Morgan, Director of the Chemicals Division, recommending the purchase of an additional 15,000,000 gallons of benzene (benzol). This increases our recommendation of April 2, 1942, to 65,000,000 gallons to be purchased up to December

31, 1943. [37] This office concurs in this recommendation.

Sincerely yours,

/s/ W. Y. ELLIOTT,

Director, Stockpiling and
Transportation Division.

Enclosure''

(Memorandum)

“War Production Board, Washington, D. C.

May 27, 1943.

In Reply Refer to: Chemicals Divisions, Room
1000, Tempo “S” Building.

Dr. W. Y. Elliott, Director, Division of Stockpiling
and Transportation, War Production Board,
Washington, D. C.

Dear Dr. Elliott:

On April 2, 1942, it was recommended that purchase be made of 50,000,000 gallons of domestic benzene to be refined and stockpiled.

Over 40,000,000 gallons of benzene have already been purchased under this arrangement and it now appears that there will be available more than the original 50,000,000 gallons.

Therefore, for the year 1943 the purchase is recommended of an additional 15,000,000 gallons up to December 31, 1943.

Very sincerely yours,

/s/ D. P. MORGAN,

Director, Chemicals Division''

9. On April 20, 1942, the Director of Industry Operations of the War Production Board issued Conservation Order No. M-137 (7 F.R. 2944) relating to the chemical compound known by the name of benzene or by the name benzol, which order took effect immediately upon issuance. Said order was amended June 1, 1942 (7 F.R. 4172), and was further amended July 23, 1943 (8 F.R. 10350). As amended July 23, 1943, the order was entitled "Allocation Order M-137." The said Allocation Order M-137 was revoked June 1, 1944 (9 F.R. 5970), and superseded by General Allocation Order M-300, Schedule 22 issued on said date (9 F.R. 5982).

10. During the years 1942 and 1943, beginning in the month of July, 1942, plaintiff, in participation with other interstate common carriers by railroad, at the request of defendant, transported for and on behalf of defendant from Seattle, Washington, to Los Angeles, California, and from Seattle, Washington, to Vernon, California (Vernon being within the tariff switching limits of Los Angeles), upon Government bills of lading, prepared and furnished by defendant's agent, a number of tank car shipments of motor benzol. On each of said bills of lading Defense Supplies Corporation (Seattle Gas Company) is shown as shipper and consignor, and Defense Supplies Corporation, c/o Wilshire Oil Company, is shown as consignee. Plaintiff, as the final and delivering carrier, made delivery of said shipments in accordance with said bills of lading. The particulars of the transportation service performed, including the routes of movement, the num-

bers of Government bills of lading and dates thereof, identity of cars in which transportation was performed, dates of delivery, and weights of carload shipments transported, are correctly shown in "Exhibit A" attached to and made a part of the complaint.

11. The shipments involved in this suit consisted of 944,032 gallons, more or less, of motor benzol purchased and acquired by defendant from Seattle Gas Company, Seattle, Washington, from time to time during the period from June, 1942, to November, 1943, and at the times of said transportation said motor benzol [39] was owned by and was the property of defendant. Each of said purchases was made by defendant pursuant to allocations by the War Production Board, and to notice of such allocations substantially in the form of the letter and attachment thereto marked Exhibit C, hereto attached and made a part hereof. The first such purchase was made by a telegram from defendant to Seattle Gas Company dated June 27, 1942, a true and complete copy of which, marked Exhibit D, is attached hereto and made a part hereof. The subsequent purchases were evidenced by letters from defendant to said company, with said company's acceptances endorsed thereon. A true and complete copy of a letter from defendant to said company, dated October 19, 1942, and of said company's acceptance thereof, dated October 26, 1942, marked Exhibit E, is attached hereto and made a part hereof. All of the letters from defendant and acceptances by said company covering said subse-

quent purchases were similar in all respects to said Exhibit E, except as to dates, quantity of benzol, and price. Defendant instructed Seattle Gas Company to ship said motor benzol to Wilshire Oil Company, Inc., Vernon (Los Angeles), California, to show defendant as consignor and consignee of these shipments, to use bills of lading therefor furnished by defendant's agent, and to mark on all of said bills of lading "For Military Use." Said instructions were followed by Seattle Gas Company. The various shipments of said benzol, upon arrival at destination, were stored for defendant at the Vernon tank farm of said Wilshire Oil Company, Inc., pursuant to a contract dated May 13, 1942, between defendant and Wilshire Oil Company, Inc., a copy of which said contract, marked Exhibit F is attached hereto and made a part hereof. The first shipment of said motor benzol involved in this suit arrived in said storage on July 28, 1942, and the last on December 9, 1943.

12. Each of the carriers participating in said transportation was at all times herein mentioned a party to and participated [40] in the tariff or tariffs specifying the rate or rates for the transportation of motor benzol from Seattle, Washington, to Los Angeles and Vernon, California. Said tariffs and the rates specified therein were duly published and filed with the Interstate Commerce Commission as required by the provisions of Section 6 of Part I of the Interstate Commerce Act and were in legal effect at the time when the shipments were made. The rate or rates specified in said tariffs for the

transportation of motor benzol from Seattle, Washington, to Los Angeles and Vernon, California, are those shown in "Exhibit A" attached to the complaint in the column headed "Applicable Tariff Rate Per Cwt." Plaintiff based the amount of charges billed defendant for said transportation services on said duly published and filed rate or rates, and the aggregate amount of charges based on said rate or rates for such transportation services was the sum of \$56,736.14.

13. Said shipments were billed and forwarded with charges collect, and plaintiff, being the delivering carrier charged with the duty of collecting the entire freight charges on said shipments, presented to defendant its respective bills therefor aggregating the sum of \$56,736.14 for such transportation charges for said shipments. Defendant, however, claiming the right to make land-grant deductions in amounts aggregating the sum of \$23,049.51, refused to make payments in amounts aggregating the sum of \$56,736.14 for such transportation services, but paid to plaintiff amounts aggregating the sum of \$33,686.63 only, which was the aggregate amount of transportation charges payable by defendant to plaintiff for said transportation services if defendant was entitled to land-grant deductions on the entire quantity of 944,032 gallons of benzol transported. The amounts so paid were accepted by plaintiff under protest as part payments only and plaintiff subsequently and prior to the bringing of this action rendered its bills to defendant for the unpaid balances of said [41] trans-

portation charges claimed by plaintiff in the sum of \$23,049.51, which defendant had refused to pay, but defendant failed and refused and still fails and refuses to pay said unpaid balances or any part hereof. The dates and numbers of plaintiffs bills against defendant, the amounts billed, the amounts paid, and the balances claimed by plaintiff are correctly shown in "Exhibit A" attached to and made a part of the complaint.

14. All carriers by railroad owning and operating or operating lines of railroad constructed with the aid of grants of land received from the United States, either directly or through a predecessor or predecessors in interest, participating in the transportation of the shipments heren described, and each of them, and all carriers by railroad owning and operating or operating lines of railroad constructed with the aid of grants of land received from the United States, either directly or through a predecessor or predecessors in interest, parties to and participating in any land-grant route or routes with which the route or routes of movement of the said shipments herein described were equalized under agreements with the United States from the standpoint of net charges to the United States for transportation service, and each of them, had, prior to and at the time of said shipments, filed with the Secretary of the Interior of the United States, in the form and manner prescribed by him, releases of all of their, and its, claims against the United States to lands, interests in lands, compensation, or reimbursement on account of lands and interests in lands

which have been granted, claimed to have been granted, or which it was claimed should have been granted to any such carrier or predecessor in interest under any grant to such carrier or predecessor in interest, in full and complete compliance with the provisions and requirements of paragraph (b) of Section 321 of Part II, Title III, of the Transportation Act of 1940 (54 Stat. L. 954); Southern Pacific Railroad Company and Central Pacific Railway Company, [42] owners and lessors, severally, of portions of the lines of railroad operated by Southern Pacific Company, and Southern Pacific Land Company, transferee of certain interests of Southern Pacific Railroad Company and Central Pacific Railway Company, and each of them, had, prior to and at the time of said shipments, filed with the Secretary of the Interior of the United States in the form and manner prescribed by him, like releases. Each of such releases so filed was approved by the Secretary of the Interior prior to any of the shipments in question and the performance of the transportation service hereinbefore set forth.

15. Motor benzol is not suitable for use in the manufacture of cumene, ethyl benzene or styrene, processing and treatment of motor benzol being required to produce industrial pure benzol suitable for such use. Defendant entered into a contract with Shell Oil Company, Incorporated, on October 16, 1943, for the treatment and processing of motor benzol, described therein as untreated benzol, and thus produce industrial pure benzol, at the Wilmington refinery of Shell Oil Company, Incorporated,

near Watson, California. A true copy of said contract is attached hereto as Exhibit G and made a part hereof. Under the same conditions and terms as though contained in said contract, said 944,032 gallons, more or less, of motor benzol purchased and acquired by defendant from said Seattle Gas Company, and stored for defendant at the Vernon tank farm of said Wilshire Oil Company, Inc., were treated and processed by said Shell Oil Company, Incorporated.

16. Defendant made and entered into a contract with Wilshire Oil Company, Inc., dated November 16, 1943, and a contract with Richfield Oil Corporation, dated December 3, 1943, for the sale by defendant to said oil companies of industrial pure benzol to be used by said purchasers in the manufacture of cumene. True copies of said contracts are attached hereto as Exhibits H and I, respectively, and made a part hereof. [43]

17. Defendant made and entered into a contract with Rubber Reserve Company, dated November 30, 1943, for the sale by defendant of industrial pure benzol to be used by said company in the manufacture of styrene. A true copy of said contract is hereto attached, marked Exhibit J, and made a part hereof. Rubber Reserve Company is now and was during all of the times herein mentioned, a corporation duly created by Reconstruction Finance Corporation at the request of the Federal Loan Administrator with the approval of the President, pursuant to the authority contained in Section 5d of

the Reconstruction Finance Corporation Act as amended, with its principal office located in the City of Washington, District of Columbia. A certified copy of its charter, dated June 28, 1940, was duly filed with the Secretary of the Senate and the Clerk of the House of Representatives, and was published in the Federal Register as contemplated by 15 U.S.C., Section 606b(3). True copies of the charter and by-laws of said Rubber Reserve Company as in force and effect during all of the times herein mentioned, marked Exhibits K and L, respectively, are attached hereto and made a part hereof. At all times material to this action the accounts of Rubber Reserve Company were not audited, settled, or adjusted by the General Accounting Office of the United States.

18. Defendant sold and delivered to said Wilshire Oil Company, Inc., Richfield Oil Corporation, and Rubber Reserve Company, commencing in November, 1943, and continuing through August, 1944, industrial pure benzol processed and produced as aforesaid from said 944,032 gallons of motor benzol. Said sales were made pursuant to allocations by the War Production Board and to recommendations by the Petroleum Administration for War as to the benzol to be used in the manufacture of cumene, and by the Office of Rubber Director as to the benzol to be used in the manufacture of styrene. Of said industrial pure benzol 40.56% was sold to and delivered to Wilshire Oil Company, Inc., and Richfield Oil Corporation [44] under said contracts dated November 16, 1943, and December 3, 1943 (Exhibits H

and I hereto), for use in the manufacture of cumene. The balance of said industrial pure benzol (59.44%) was sold and delivered to Rubber Reserve Company under said contract dated November 30, 1943 (Exhibit J hereto) for use in the manufacture of styrene.

19. The said Wilshire Oil Company, Inc., and Richfield Oil Corporation manufactured cumene from the industrial pure benzol sold to them by combining said benzol with propylene to produce by chemical reaction cumene.

20. Pursuant to request of the Petroleum Administration for War, the War Department and the Navy Department, defendant entered into contracts to purchase the production of 100 octane aviation gasoline manufactured by various refineries, including Wilshire Oil Company, Inc., and Richfield Oil Corporation. The contracts entered into by defendant with Wilshire and Richfield, as in force and effect during the times herein mentioned, were dated respectively December 20, 1943, and February 20, 1943, and true and complete copies of said contracts, except the exhibits thereto, marked Exhibits M and N, respectively, are attached hereto and made a part hereof.

21. Styrene is produced from ethyl benzene by chemical reaction in the presence of a catalyst. Ethyl benzene is produced by combining benzol with ethylene by chemical reaction. Rubber Reserve Company first produced ethyl benzene from the industrial pure benzol sold to said company by defendant. With that portion or quantity of ethyl benzene produced from

23.06% of the industrial pure benzol processed and produced as aforesaid from said 944,032 gallons of motor benzol, Rubber Reserve Company produced styrene. Pursuant to allocations by the Office of Rubber Director the styrene so produced was sold by Rubber Reserve Company to rubber companies engaged and for use in the production of synthetic [45] rubber. Said synthetic rubber was produced by combining through chemical reaction styrene and butadiene in the presence of a catalyst. Said rubber companies either used the synthetic rubber so produced to manufacture rubber products, or sold it to other companies for the manufacture of rubber products. 42% of the rubber products manufactured as aforesaid was sold to the Army and Navy for their uses and 58% of said rubber products was sold for civilian uses pursuant to allocations by the War Production Board. 9.66% of motor benzol involved in this action was used in the production of rubber products sold to the Army and Navy for their uses, and 13.4% of the motor benzol involved in this action was used in the production of the rubber products sold for such civilian uses.

22. The remainder of the ethyl benzene produced by Rubber Reserve Company, that is, that portion or quantity made from 36.38% of the industrial pure benzol processed and produced as aforesaid from 944,032 gallons of motor benzol was sold by Rubber Reserve Company, at the request of the Petroleum Administration for War, to refineries engaged in producing 100 octane aviation gasoline for sale to defendant under contracts similar to Exhibits M

and N hereto, to be used by said refineries in the manufacture of said gasoline. Said sales were evidenced by letter agreements in the form attached hereto, marked Exhibit O, and made a part hereof.

23. Cumene and ethyl benzene are components of 100 octane aviation gasoline by blending operations which comprise a physical mixture without chemical change. During all of the times herein mentioned subsequent to December 2, 1942, the manufacture, use, and disposition of cumene and ethyl benzene have been under the control and administration of the Petroleum Administration for War. Pursuant to allocations by said Administration, the cumene manufactured by Wilshire Oil Company, Inc., and [46] Richfield Oil Corporation from the benzol sold to them by defendant as aforesaid, was used by said companies in the manufacture of 100 octane aviation gasoline produced by said companies and sold to defendant in accordance with said contracts dated December 20, 1943, and February 20, 1943 (Exhibits M and N hereto).

24. The 100 octane aviation gasoline produced by Wilshire Oil Company, Inc., and Richfield Oil Corporation by blending with cumene manufactured by said companies from benzol purchased by them from defendant as aforesaid was purchased by defendant from said companies pursuant to said contracts dated December 20, 1943, and February 20, 1943 (Exhibits M and N hereto). The 100 octane aviation gasoline produced by other refineries by blending with ethyl benzene manufactured by Rubber Reserve

Company from the benzol so purchased by said company from defendant was likewise purchased by defendant from said refineries pursuant to contracts similar to said Exhibits M and N.

25. The 100 octane aviation gasoline so purchased by defendant was sold by defendant to the Army and Navy pursuant to a contract executed as of May 20, 1943, between the War Department, the Navy Department, the Petroleum Administration for War, and defendant, a true and complete copy of said contract, except the exhibits thereto, marked Exhibit P, is attached hereto and made a part hereof. A true and complete copy of the contract of December 19, 1942 (referred to in said contract of May 20, 1943—Exhibit P), except the exhibits thereto, marked Exhibit Q, is attached hereto and made a part hereof. The contract of May 20 1943 (Exhibit P), was modified and extended by the contract of July 1, 1944, a true and complete copy of which, except certain [47] provisions thereof deemed not material, marked Exhibit R, is attached hereto and made a part hereof.

Dated July 2, 1945.

/s/ C. O. AMONETTE,

/s/ CHARLES W. BURKETT, Jr.,

Attorneys for Plaintiff.

/s/ THEODORE R. MEYER,

/s/ R. L. MILLER,

/s/ JOSEPH F. HOGAN,

/s/ BROBECK, PHLEGER &

HARRISON,

Attorneys for Defendant. [48]

EXHIBIT A
CHARTER OF DEFENSE SUPPLIES
CORPORATION

As Amended on February 15, 1941, and
July 9, 1941

In order to aid the Government of the United States in its national-defense program, Reconstruction Finance Corporation hereby declares:

First, That pursuant to the authority contained in Section 5d of the Reconstruction Finance Corporation Act, as amended by Act of Congress approved June 25, 1940, at the request of the Federal Loan Administrator with the approval of The President, there has been created a corporation under the name of Defense Supplies Corporation (hereinafter referred to as the "Corporation").

Second, That the location of the principal office of the Corporation shall be in the City of Washington, District of Columbia.

Third, the objects, purposes and powers of the Corporation shall be:

(a) To produce, acquire, carry, sell, or otherwise deal in strategic and critical materials as defined by the President;

(b) To purchase and lease land; purchase, lease, build, and expand plants; purchase and produce equipment, facilities, machinery, materials, and supplies for the manufacture of strategic and critical materials, arms, ammunition, and implements of

war, any other articles, equipment, facilities, and supplies necessary to the national defense, and such other articles, equipment, supplies, and materials as may be required in the manufacture or use of any of the foregoing or otherwise necessary in connection therewith;

(c) To lease, sell, or otherwise dispose of such land, plants, facilities, and machinery to others to engage in such manufacture;

(d) To engage in the manufacture of arms, ammunition, and implements of war;

(e) To produce, lease, purchase, or otherwise acquire railroad equipment (including rolling stock), and commercial aircraft, and parts, equipment, facilities and supplies necessary in connection with such railroad equipment and aircraft, and to lease, sell, or otherwise dispose of the same;

(f) To purchase, lease, build, expand, or otherwise acquire facilities for the training of aviators and to operate or lease, sell, or otherwise dispose of such facilities to others to engage in such training; and [50]

(g) To take such other actions as the President and the Federal Loan Administrator may deem necessary to expedite the national defense program, but the amount outstanding at any one time for carrying out this subsection (g) shall not exceed \$200,000,000.

The Corporation shall have power and authority to do and perform all acts and things whatsoever

which are necessary, suitable, convenient or proper in connection with or incidental to the foregoing objects, purposes, and powers, including, but without limitation, the power to lease, purchase, or otherwise acquire, and to lease, sell or otherwise dispose of, and to deal in, manage and control, transportation facilities in and between the other American countries of the Western Hemisphere and the United States and to otherwise develop such facilities and equipment incidental thereto in order to facilitate trade between those countries and the United States and for other purposes affecting the national defense, the power to borrow and hypothecate, to lend money, to adopt and use a corporate seal, to make contracts, to acquire, hold and dispose of real and personal property, and to sue and be sued in any court of competent jurisdiction.

Fourth, the Corporation including its franchise, its capital, reserves, surplus, and income shall be exempt from all taxation (which shall, for all purposes, be deemed to include sales, use, storage, and purchase taxes) now or hereafter imposed by the United States, or any territory, dependency or possession thereof, or by any State, County, municipality or local taxing authority, except that any real property (or buildings which are considered by the laws of any State to be personal property for taxation purposes) of the Corporation shall be subject to State, territorial, county, municipal or local taxation to the same extent according to its value as other real property is taxed.

Fifth, That the Corporation shall be an instrumentality of the United States Government, shall be entitled to the free use of the United States mails, and shall in all other respects be possessed of the privileges and immunities that are conferred upon the Reconstruction Finance Corporation under the Reconstruction Finance Corporation Act, as amended.

Sixth, That the total authorized capital stock of the Corporation shall be Five Million Dollars (\$5,000,000), of which One Million Dollars (\$1,000,000) shall be paid in immediately, and the balance as called. Such stock shall be of one class, shall have a par value of \$100 per share, and shall be issued for cash only. Reconstruction Finance Corporation shall subscribe for all of the capital stock of the Corporation and such stock shall not be transferable.

Seventh, That the Corporation shall have existence until dissolved by Reconstruction Finance Corporation or by Act of Congress.

Eighth, That the stockholder shall not be liable for the debts, contracts, or engagements of the Corporation except to the extent of unpaid stock subscriptions. [51]

Ninth, That the affairs and business of the Corporation shall be managed by a board of directors who shall be appointed by Reconstruction Finance Corporation pursuant to the provisions of this Charter and the By-Laws of the Corporation.

Tenth, That this Charter and the By-Laws may

be amended at any time by Reconstruction Finance Corporation.

In Witness Whereof, Reconstruction Finance Corporation has caused this Charter to be signed by its executive officer, Chairman of its Board of Directors, attested by its Secretary, and has caused its seal to be hereunto affixed this day of 194 . . .

RECONSTRUCTION FINANCE
CORPORATION,

By, Chairman.

Attest:, Secretary.

EXHIBIT B

DEFENSE SUPPLIES CORPORATION
BY-LAWS

OFFICES

1. The principal office shall be in the City of Washington, District of Columbia. The Corporation shall also have branch offices at such other places as the Board of Directors may from time to time designate.

SEAL

2. There is impressed below the official seal which is hereby adopted for the Corporation.

BOARD OF DIRECTORS

3. The directors shall be not less than five nor more than ten in number, as Reconstruction Finance Corporation may provide. The directors shall be appointed by Reconstruction Finance Corporation.

Each director will hold office until the thirty-first day of December of the year in or for which appointed and until his successor shall be duly appointed and qualified.

MEETINGS OF THE BOARD

4. Regular meetings of the directors shall be held at such time and place as the directors may prescribe. Special meetings may be called by the President or Secretary. At any meeting of the Board of Directors, a majority of the duly appointed and qualified directors shall constitute a quorum for the transaction of any business that may come before the meeting.

COMMITTEES OF THE DIRECTORS

5. The Board of Directors shall select from its members an executive committee which shall have, possess and may exercise all of the power and authority of the Board of Directors at such [53] times as the Board of Directors is not in session. The Board of Directors may create such additional committees and confer upon them such duties and powers as it may deem advisable.

COMPENSATION OF DIRECTORS

6. The directors of the Corporation shall receive no fees or honorarium for attendance at meetings but shall be entitled to be reimbursed in accordance with the Standardized Government Travel Regulations, as amended, for travel expenses incurred in attending meetings of the Board of Directors and meetings of the committees of which they are mem-

bers, and any other travel expenses incurred by them on official business.

OFFICERS

7. The officers of the Corporation, who shall be appointed by the Board of Directors, shall be: a Chairman of the Board of Directors, a president, one or more vice-presidents, a secretary, a treasurer, a general counsel, and such other officers and agents as the Board of Directors may deem advisable. The president shall be a director. The salaries and compensation of all officers, agents and employees shall be fixed by the Board of Directors and paid by the Reconstruction Finance Corporation and reimbursed by the Corporation. Any officer, agent or employee may be removed by the Board of Directors at any time, with or without cause.

CHAIRMAN OF THE BOARD

8. The chairman of the Board of Directors shall have general supervision over the business of the Corporation and shall preside at all meetings of the Board of Directors.

PRESIDENT

9. The president shall be the chief executive officer of the Corporation and in the absence of the Chairman of the Board, shall preside at all meetings of the directors. Unless otherwise provided by the Board of Directors, all contracts and other documents which the Corporation may be required to execute in the conduct of its business shall be signed by the President.

VICE-PRESIDENT

10. In the absence or disability of the president, the vice-president (or vice-presidents, in the order of their seniority if more than one) shall perform the duties and execute the powers of the president. They shall perform such other duties as the Board of Directors may prescribe.

SECRETARY

11. The Secretary shall attend all meetings of the Board of Directors and Executive Committee and record the minutes [54] of all such meetings. He shall give, or cause to be given notice of all meetings; shall perform such duties as may be prescribed by the Board of Directors or the Executive Committee, and all other duties incident of the office of Secretary. He shall keep in safe custody the seal of the Corporation, and shall affix the same to any instrument requiring it. When so affixed, the seal shall be attested by the signature of the Secretary.

TREASURER

12. The treasurer shall have the custody of the corporate funds and securities and shall keep a full and accurate account of all financial transactions of the Corporation, in form prescribed or approved by Reconstruction Finance Corporation, and shall deposit with Reconstruction Finance Corporation all funds for the account of the Corporation or in such other depositories as may be designated or approved for the purpose by Reconstruction Finance Corporation. He shall disburse the funds of the Corporation pursuant to the authority of the Board

of Directors of the Corporation, or Executive Committee, and shall render to the Board of Directors or Executive Committee of the Corporation, whenever so required, an account of all his transactions as Treasurer and of the financial condition of Corporation. He shall, if so required by the Corporation, give a bond in a form and sum satisfactory to the Corporation and Reconstruction Finance Corporation.

GENERAL COUNSEL

13. The general counsel shall be the chief consulting officer in all legal matters and will supervise such matters for the Corporation.

FISCAL YEAR

14. The fiscal year shall end on the thirty-first day of December in each year.

OATH OF OFFICE

15. All directors, and officers (and other agents or employees of the Corporation, when so required by the Board of Directors or Executive Committee) shall subscribe to the oath of office prescribed by Section 1757, Revised Statutes of the United States.

CHECKS

16. All checks and drafts for authorized disbursements issued by the Corporation shall be signed by the Treasurer and shall be countersigned by the Secretary. The Board of Directors may by resolution designate other officers or directors to sign or countersign checks, drafts, notes or other documents on behalf [55] of the Corporation. Reconstruction Finance Corporation at the request of the Board of Directors of the Corporation shall

certify to the Treasurer of the United States the names of the incumbents of all offices, the holders whereof have such signatory powers.

STOCK CERTIFICATES

17. The stock certificates or receipts for payments by Reconstruction Finance Corporation, for or on account of the stock subscribed, shall be signed by the president or a vice-president and by the secretary of the Corporation.

EXPENSES

18. All expenses incurred in connection with the operation of the Corporation shall be supervised and paid in such manner as the Board of Directors or Executive Committee may from time to time prescribe.

NOTICES

19. Whenever under the provisions of these By-Laws any notice is required to be given, it shall not be construed to mean personal notice, but such notice may be given by mail, telephone or telegraph. Any requirement as to notice may be waived in writing by the party entitled thereto.

AMENDMENTS

20. These By-Laws may be altered or amended or repealed by the Board of Directors of Reconstruction Finance Corporation at any meeting by such Board. [56]

EXHIBIT C

War Production Board, Washington, D. C.

February 3, 1943.

In Reply Refer to Room 1519, Temporary "S."
Mr. Stuart K. Barnes, Vice President, Defense Sup-
plies Corporation, Room 1003 Lafayette Bldg., 811
Vermont Avenue, Washington, D. C.

Attention: Mr. C. A. Jostes

Gentlemen:

We are enclosing herewith a list covering the al-
location of benzol for February delivery to the De-
fense Supplies Corporation's stockpile.

Very truly yours,

/s/ D. C. ROSS,

Coal Tar Products Unit

CC: Mr. Frost [57]

February 2, 1943

BENZOL—FEBRUARY DELIVERY (1943)

Allocations to D. S. C. Stockpile

Producer	Plant	Pure	Motor	Destination
American Rolling Mill Co. Barrett Div.	Hamilton, Ohio	150,000		Lemont, Ill.
Allied Chemical & Dye Corp. Colo. Fuel & Iron Corp.	Frankford, Pa. Minnequa, Colo.	10,000 90,000		Unknown c/o Wilshire Oil Company, Vernon, Calif.
International Harvester Co. Michigan Alkali Division	So. Chicago, Ill. Wyandotte, Mich.	30,000 40,000		Lemont, Ill. Lemont, Ill.
Sloss Sheffield Steel & Iron Co. Woodward Iron Company	No. Birmingham, Ala. Woodward, Ala.	20,000 30,000		Unknown Unknown
Bethlehem Steel Company Bethlehem Steel Company	Johnstown, Pa. Sparrows Pt., Md.	400,000 650,000		Hays, Pa. Baltimore, Md.
Brooklyn Union Gas Co. Connecticut Coke Company	Brooklyn, N. Y. New Haven, Conn.	230,000 110,000		Unknown Carteret, N. J.
Eastern Gas & Fuel Assoc. Hudson Valley Fuel Corp.	Everett, Mass. Troy, N. Y.	200,000 140,000		Unknown c/o Std. Oil Co. of N. J., Bay- way, N. J.
Koppers Company Philadelphia Coke Company	St. Paul, Minn. Philadelphia, Pa.	60,000 120,000		Lemont, Ill. c/o Sinclair Refining Co., Mar- cus Hook, Pa.

Benzol—February Delivery (1943)—(Continued)

Producer	Plant	Pure	Motor	Destination
Pittsburgh Coke & Iron Co.	Pittsburgh, Pa.		150,000	Unknown
Pittsburgh Coke & Iron Co.	Pittsburgh, Pa.	150,000 (1°)		c/o Atlantic Refining Co., Pt. Breeze, Philadelphia, Pa.
Crucible Steel Co. of Amer.	Midland, Pa.		160,000	Unknown
Crucible Steel Co. of Amer.	Midland, Pa.	30,000 (2°)		c/o Atlantic Refining Co., Pt. Breeze, Phila., Pa.
Rainey-Wood Coke Company	Swedeland, Pa.		110,000	Marcus Hook, Pa.
Republic Steel Corporation	Warren, Ohio		70,000	Hays, Pa.
Republic Steel Corporation	Thomas, Ala.		60,000	Port Birmingham, Ala.
Seattle Gas Company	Seattle, Wash.		68,000	c/o Wilshire Oil Co., Los Angeles, Calif.
Tennessee Products Corp.	Chattanooga, Tenn.		20,000	c/o Gulf Refg. Co., Port Birmingham, Ala.
U.S.S.-Columbia Steel Co.	Provo, Utah		70,000	Unknown
U.S.S.-Tenn. Coal, Iron & R.R. Co.	Fairfield, Ala.		30,000	Unknown
			<hr/>	
			320,000	2,888,000=3,208,000

EXHIBIT D

Defense Supplies Corporation

Washington 25, D. C.

Telegram

James F. Pollard, President, Seattle Gas Company,
Seattle, Washington. June 27, 1942

We Accept Your Offer Two Thousand Barrels Motor Benzol at Thirteen Cents Per Gallon F.O.B. Your Storage Seattle. We Will Purchase Subsequent Production at Twelve Cents Per Gallon F.O.B. Seattle. Ship to Defense Supplies Corporation Care of Wilshire Oil Company, Vernon Tank Farm, Los Angeles, California. Please Investigate if They Can Receive Material From Tanker. Prepay Freight for Our Account. Send Shipping Documents and Invoices to Hector C. Haight, Agent Defense Supplies Corporation, 316 Bendix Building, Twelfth and Maple Streets, Los Angeles, California, One Copy to This Office. Send Us Air Mail Specifications of Your Product. Letter Follows.

/s/ JOHN D. GOODLOE,

CAJ:KC

Executive Vice President.

EXHIBIT E

In reply refer to SRD-6

October 19, 1942

Mr. James F. Pollard, Seattle Gas Company, 1511
Fourth Avenue, Seattle, Washington.

Contract No. 15-P-73

Dear Sir:

Reference is made to our telegram of October 13, in which we agreed to purchase a specified quantity of Motor Benzol in order to relieve congestion in your storage. The following summary of the transaction is submitted for your verification:

1. We will purchase approximately 30,000 gallons of Motor Benzol at a price of 13c per gallon, f.o.b. cars at your plant at Seattle, Washington.

2. You will ship this material via Union Pacific Railroad to the Wilshire Oil Company, Inc., at Vernon, California, showing this corporation as the consignee and consignor, using Government Bills of Lading to be furnished by our Agent for this purpose. You will mark these bills of lading in the following manner:

“For Military Use”

3. It is understood that this purchase is primarily for the purpose of relieving a critical storage congestion at your plant, and is not to be considered as a basis for future purchases at this price.

4. You will forward the original and one copy of the covering invoices, and bills of lading to our Agent, Mr. Hector C. Haight, 3rd floor, Pacific Mutual Building, 523 W. 6th Street, Los Angeles,

California, with one copy of each of these documents to this office.

If the foregoing meets with your approval, we would appreciate your acknowledging your acceptance by signing three copies of this letter. Two copies should be forwarded to Mr. Haight, with one copy to this office.

Very truly yours,

/s/ STUART K. BARNES,

Vice President.

JEJ:aa—Enclosures.

Accepted Oct. 26, 1942. James F. Pollard, Pres.,
Seattle Gas Company. [61]

EXHIBIT F

BENZOL STORAGE CONTRACT

This Contract, made and entered into this 13th day of May, 1942, by and between Defense Supplies Corporation, a corporation created by Reconstruction Finance Corporation pursuant to Section 5(d) of the Reconstruction Finance Corporation Act as amended (hereinafter referred to as "Supplies"), and Wilshire Oil Company, Inc., a California corporation, with offices in Los Angeles, California, (hereinafter referred to as "Tank Owner");

Witnesseth:

Whereas, Supplies is engaged in purchasing motor benzol from manufacturers thereof who are unable to dispose of such benzol for uses permissible under Order M-137 of the War Production Board, issued April 20, 1942, and is desirous of storing

such benzol until such time as it may be allocated to various consumers thereof by the War Production Board; and

Whereas, Tank Owner has available for storage of benzol approximately 80,000 barrels of tankage at its Vernon tank farm suitable for the storage of benzol, and is willing to make such tankage available to Supplies for the storage of benzol on the terms and conditions hereinafter set forth:

Now, Therefore, in consideration of the mutual covenants herein contained it is agreed by and between the parties hereto as follows:

1. Receipt of Shipments.

Tank Owner shall receive shipments of benzol from motor, rail and barge-line carriers, but only if Tank Owner has facilities for receiving from tank trucks, tank cars and/or barges, or installs such facilities at the request and cost of Supplies. Tank Owner shall keep his tanks, pumps and lines clean [62] and free from materials which will contaminate motor benzol. Tank Owner shall measure and notify Supplies of the exact volume in gallons of each shipment received and if so requested, will abstract and hold for Supplies a sample thereof suitable for analysis. Tank Owner shall, promptly after the receipt of each shipment, execute and deliver to Supplies its certificate reciting the receipt of the relative shipment, the volume thereof in gallons, name of shipper, and description and location of the tank where the benzol is stored, together with a recitation that such benzol was received and is stored for Supplies.

2. Risk of Loss.

Tank Owner shall be under no obligation with respect to benzol stored except to exercise ordinary care in such storing, and any insurance on the benzol required by Supplies shall be carried by Supplies for its own account. Tank Owner shall not be chargeable with shrinkage losses due to evaporation. Any taxes imposed on stored benzol shall be for the account of Supplies.

3. Storage Charges.

Supplies shall pay to Tank Owner storage charges or tank rental, the loading in-and-out and transfer charges provided for in Appendix A annexed hereto and made a part hereof. Tank Owner shall, on or before the tenth day of each month during the storage period, submit to Supplies an itemized statement of charges due for the preceding month, and Supplies shall pay the amount of said charges promptly and not later than the twentieth day of such month.

4. Shipping From Storage.

Upon receipt of shipping instructions from Supplies, Tank Owner shall load and ship in tank cars, tank trucks or barges, if Tank Owner shall have facilities therefor, to such consignees as Supplies may designate. It is recognized by the parties hereto [63] that motor benzol solidifies at approximately 30° Fahrenheit and is not susceptible of being loaded out of tanks without special heating facilities being provided. Should Supplies require the handling of the benzol during periods when the heating thereof is necessary, Tank Owner shall,

if such facilities are not available to it and if so requested by Supplies, install the requisite heating facilities, such installation to be at the sole cost and expense of Supplies.

4a. On all shipments of benzol from Tank Owner's storage to any point within one hundred (100) miles of said storage, Supplies shall notify Tank Owner prior to making any such shipment, whereupon Tank Owner shall have the option to transport said Benzol by tank truck and/or trailer or provide such transportation facilities and Supplies will pay Tank Owner for such transportation at the rates prescribed by the Railroad Commission of the State of California.

5. Records.

Tank Owner shall keep separate books and records which will clearly reflect all of the transactions made by it under and pursuant to this contract. From time to time, upon request of Supplies, Tank Owner will furnish Supplies with such additional information as the latter may request in connection with carrying out the provisions of this storage contract. Tank Owner will permit representatives of Supplies, during the usual hours of business, to audit or examine such books, records and accounts as may be pertinent to the purpose of auditing and verifying reports furnished pursuant to this contract and the performance by Tank Owner of its terms.

5a. Term.

This contract shall continue in force until cancelled by either party upon ninety (90) days' no-

tice given to the other [64] party in writing. Any notice to Supplies, under this paragraph, shall be deemed sufficiently served when deposited in the United States mail, postage prepaid, addressed to Supplies, Washington, D. C. Any notice to Tank Owner under this paragraph, shall be deemed sufficiently served when deposited in the United States mail, postage prepaid, addressed to Tank Owner at 1206 Maple Avenue, Los Angeles, California.

6. Miscellaneous Provisions.

In carrying out this contract Tank Owner agrees to comply with and give all stipulations and representations required by applicable Federal Laws, and further agrees to require such compliance, representations and stipulations with respect to any contract entered into by it with others, incidental to or in connection with this contract, as may be required by applicable Federal laws; notwithstanding the generality of the foregoing, Tank Owner further agrees that in the performance of this contract it will not discriminate against any worker because of race, creed, color or national origin. Tank Owner is a corporation and this contract is made with it for its general benefit and no Member of, or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom in violation of the law of the United States covering such matters.

In Witness Whereof, the parties have caused this

contract to be executed as of the day and year first above written.

DEFENSE SUPPLIES
CORPORATION.

By /s/ GEO. H. HILL, JR.,
Vice President.

WILSHIRE OIL COMPANY,
INC.

By /s/ M. A. MACHRIS,
Vice President.

Attest:

/s/ DUDLEY H. DIGGES,
Acting Secretary, Defense
Supplies Corporation. [65]

APPENDIX A

Wilshire Oil Company, Inc.
(Vernon Tank Farm Tankage)

The storage charge for the benzol stored pursuant to the within contract shall be one cent per barrel of 42 U.S. gallons per month, fractional months pro rata.

For loading out of tank cars, Tank Owner shall charge Supplies two cents per barrel of 42 U. S. gallons.

For loading into tank cars, Tank Owner shall charge Supplies two cents per barrel of 42 U. S. gallons. [66]

EXHIBIT G
AGREEMENT FOR THE RERUNNING
OF BENZOL

This Agreement, made and entered into as of the 16th day of October, 1943, by and between Defense Supplies Corporation, Washington, D. C., a corporation organized pursuant to Section 5(d) of the Reconstruction Finance Corporation Act, as amended, hereinafter referred to as "Corporation," and Shell Oil Company, Incorporated, a Virginia corporation, with offices located at 100 Bush Street, San Francisco, California, hereinafter referred to as "Shell,"

Witnesseth:

Whereas, Corporation and Shell have entered into an agreement dated June 1, 1943, providing for the storage of untreated benzol owned by Corporation and stored in storage facilities owned by Shell and located at Shell's Wilmington Refinery near Watson, California; and

Whereas, Corporation desires to have Shell treat and rerun said untreated benzol and handle the resultant products, and Shell is agreeable to doing so, and it is desired to set forth the agreement between the parties with respect thereto; and

Whereas, Shell does not now have installed on the premises all of the facilities necessary to provide this service and it is desired to set forth the agreement of the parties with regard to the installation of and paymnt for the facilities which are required;

Now, Therefore, in consideration of the premises

Exhibit G—(Continued)

and the covenants herein contained, it is agreed by and between the parties hereto as follows: [67]

1. Construction of and Payment for the Treating Facilities: Shell shall install on its said refinery premises redistillation equipment and truck loading equipment, and make whatever changes in piping are needed to provide for the transfer to the treating and redistillation facilities of said untreated benzol and the loading of such treated benzol into shipping facilities. The cost of making this installation is estimated to be as follows:

Column and heat exchangers	\$10,000.00
Pumping	9,400.00
Piping pumps and miscellaneous equipment	7,500.00
	21,850.00
Installation cost	19,750.00
	<hr/>
	\$41,250.00
Total.....	\$37,250.00

Upon the completion of the installation, Shell shall furnish Corporation a statement of all costs incurred in connection therewith, and Corporation shall reimburse Shell therefor as follows:

Corporation shall pay Shell each month for and during one hundred and twenty (120) months from the date of completion thereof, 1/120th of said costs.

If, upon the expiration or sooner termination of this contract, Corporation has not reimbursed Shell for the entire cost of this installation, Corporation

Exhibit G—(Continued)

shall forthwith pay to Shell an amount of money equal to the total cost of the installation less the aggregate of the amortization payments received by Shell from Corporation as provided for above and also less the value of the facilities involved at the time of such expiration or sooner termination of the contract as such value shall be determined by [68] agreement of the parties and in the event the parties fail to agree, then as determined by arbitration.

2. Use of Existing Facilities: It shall be necessary for Shell to use from time to time in connection with the treatment and rerunning of untreated benzol hereunder, the following described tanks presently situated on Shell's refinery premises:

	bbls. capacity
1. Agitator rundown tank for acid treatment.....	1,200
	2,600
2. Distillation feed tanks (850) bbls. each).....	1,700
1,300	
	1,100
1. Distillation tops and bottoms tank (850 bbls.).....	850
1,100	
1. Dist. bottoms tank (1,100 bbls.).....	1,100
	2,200
2. Finished C-2 quality benzol tanks (850 bbls. each)....	1,700
1,100	
	8,200
Total.....	5,450

In addition, Shell may use such additional tanks as may be necessary to maintain capacity operation, but in no case may Shell be required to use more than the above tankage.

Exhibit G—(Continued)

Corporation shall pay Shell during the term hereof a monthly rental of 0.5c per barrel tank capacity for all such tankage as may be used by Shell for treating and rerunning untreated benzol.

3. Treatment of Untreated Benzol: Shell shall accept from Corporation at the outlet of the tanks at Wilmington referred to in the benzol storage agreement wherein Corporation's untreated benzol is stored, whatever benzol Corporation shall tender to Shell for treatment and rerunning hereunder. Shell shall not be obligated to accept any quantity or quantities greater than the through-put capacity of the treating facilities provided for such purpose [69] as contemplated and provided for herein, and Shell shall not be obligated to treat and rerun hereunder more than 5,000,000 gallons of untreated benzol during any calendar year or more than 500,000 gallons during any calendar month, or any untreated benzol which will not yield C-2 quality benzol by the acid treatment and redistillation contemplated hereby.

Such benzol shall be treated and rerun by Shell, and the finished benzol shall comply with Barret C-2 specifications of May 1, 1936, for Industrial Pure Benzene (benzol). Upon the completion of treatment and rerunning of the untreated benzol, the finished C-2 benzol shall be delivered into tank truck and trailer shipping facilities to be supplied by Corporation or stored in existing facilities on the premises; provided Shell shall not be required to

Exhibit G—(Continued)

2,200

furnish storage for more than ~~1,700~~ barrels finished C-2 benzol, and Corporation shall arrange to take deliveries of finished C-2 benzol at such times and in such quantities as to prevent congestion of the finished C-2 benzol storage facilities and to prevent delay in treating and rerunning operations.

Corporation shall pay to Shell for treating and rerunning untreated benzol hereunder during each calendar month of the term hereof:

(a) An amount computed in accordance with the following schedule based upon the total volume of untreated benzol accepted by Shell from untreated benzol storage at Wilmington for treatment and rerunning hereunder during the month involved:

If less than 250,000 gallons untreated benzol is accepted by Shell for treatment and rerunning hereunder (Shell shall be required to accept a minimum of 250,000 gallons during the month if available), \$2,400.00.

If between 250,000 and 350,000 gallons is accepted, 0.96c per gal. [70]

If between 350,001 and 450,000 gallons is accepted, 0.75c per gal.

If over 450,000 gallons is accepted, 0.65c per gal. plus

(b) The price paid by Shell for chemicals purchased by Shell for use in treating untreated benzol, hereunder during such time as the chemicals are not supplied to Shell by Corporation.

Exhibit G—(Continued)

4. Delivery of Finished C-2 Benzol: Shell shall deliver finished C-2 benzol to Corporation hereunder into tank truck and trailer shipping facilities supplied by Corporation at tank truck and trailer loading facilities maintained in connection with the finished C-2 benzol storage facilities. Corporation shall pay Shell 0.05c for each gallon finished C-2 benzol so delivered and loaded into tank trucks and trailers.

5. Use of Treating and Rerunning Facilities: In addition to the payments provided above to be made to Shell, Corporation shall pay to Shell each month a charge for use of Shell's treating and rerunning facilities used hereunder of six per cent (6%) per annum on its original capital investment in such facilities. The amount of Shell's capital investment shall be set forth in a statement to Corporation upon the completion of the installation of the necessary facilities. Shell's present estimate of the amount of such capital investment is Fifty-six

~~two~~ Thousand and Ten Dollars (\$56,10.00), and on the basis thereof the charge would amount to

Eighty
Two Hundred ~~Sixty~~ Dollars and Five Cents (\$280.05) per month. The monthly payment shall be determined in accordance with final figures submitted in pursuance hereof.

6. Payment: Shell shall, on or before the fifteenth (15th) day of each month during the term hereof, submit to Corporation an itemized statement of all charges accruing hereunder [71] for

Exhibit G—(Continued)

the preceding month, and Corporation shall pay to Shell the amount thereof promptly and not later than the 25th day of such month.

7. Losses: Shell shall be under no obligation with respect to losses resulting from handling untreated benzol for treatment and rerunning hereunder or for losses resulting from the treatment and rerunning of untreated benzol hereunder, excepting Shell shall exercise ordinary care in such handling, treatment and rerunning, and any insurance required by Corporation for the purpose of covering any losses shall be acquired and carried by Corporation for its own account. Shell shall not be chargeable with shrinkage losses due to evaporation or otherwise, or handling losses occurring during handling, treatment and rerunning of untreated or finished C-2 benzol under this agreement.

8. Benzol Tops and Bottoms and Acid Sludge:

A. Benzol tops and bottoms resulting from the treating and rerunning of untreated benzol hereunder shall be the property of Corporation, and Corporation shall arrange for their removal from Shell's premises or other disposal, at such times and in such quantities as will prevent congestion of Shell's facilities or delay of operations hereunder. Shell shall deliver such tops and bottoms into tank truck and trailer shipping facilities to be supplied by Corporation. Corporation shall pay Shell a loading charge of 0.05c per barrel for all tops and bottoms loaded by Shell hereunder. Payments shall be

Exhibit G—(Continued)

made monthly as provided in Paragraph 6 of this agreement.

B. Shell will arrange for disposal of all acid sludge resulting from Shell's operations hereunder without further cost to Corporations, and Shell shall not be required to account to [72] Corporation for such acid sludge.

9. Records: Shell shall keep separate books and records which will clearly reflect receipts by Shell of untreated benzol for treatment hereunder, and the quantity of finished C-2 benzol and benzol tops and bottoms resulting from such treatment. From time to time, upon request of Corporation, Shell shall furnish Corporation such additional information as Corporation may request in connection with the carrying out of the provisions of this agreement. Shell will permit representatives of Corporation, during usual hours of business, to audit or examine the aforesaid books and records for the purpose of auditing and verifying reports furnished pursuant to this agreement and the performance by Shell of its terms.

10. Determination of Quantities: The quantity of untreated benzol received hereunder by Shell for treatment and rerunning shall be determined by gauge of Shell's untreated storage tanks at Wilmington from which untreated benzol is delivered to the treating facilities. The quantity of finished C-2 benzol and benzol tops and bottoms delivered by Shell to Corporation hereunder shall be determined by gauge of the delivery facility into which

Exhibit G—(Continued)

deliveries are made. The volume of benzol so delivered shall, in each instance, be corrected to 60° F., using a coefficient of expansion of 0.00065 per degree variation.

11. Miscellaneous Provisions: In carrying out this agreement, Shell agrees to comply with and give all stipulations and representations required by applicable Federal laws, and further agrees to require compliance, representations and stipulations with respect to any contract entered into by it with [73] others incidental to or in connection with this agreement as may be required by applicable Federal laws; notwithstanding the generality of the foregoing, Shell further agrees that in the performance of this agreement it will not discriminate against any worker because of race, creed, color or national origin. Shell is a corporation, and this agreement is made with it for its general benefit, and no member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise therefrom in violation of the laws of the United States covering such matters.

12. Force Majeure: Shell shall not be liable for any failure or delay in performance of its obligations hereunder which may be caused or occasioned by any act of God, war, accident, fire, earthquake, insurrection, governmental action, strike, riot, total or partial failure of transportation facilities or supplies, or other cause, whether of a

Exhibit G—(Continued)

similar or dissimilar nature, beyond the reasonable control of Shell.

13. Duration: This contract shall remain in full force ~~and effect~~ for a period beginning on the date of commencement of processing hereunder and extending to a date of 30 days after the cessation of hostilities between the United States and Germany, Italy, and Japan; provided, however

(a) That this contract shall not expire prior to the expiration of three calendar months next following the date of commencement of processing hereunder;

(b) Supplies Corporation may terminate this contract at any time after processing has begun by thirty days prior written notice in event the benzol purified by Shell hereunder does not meet the specifications set forth in Paragraph 3; [74]

(c) Supplies Corporation may terminate this contract at any time after the expiration of three calendar months from the date of commencement of processing hereunder by thirty days prior written notice.

14. Renegotiation: This agreement is subject to the terms and provisions of Addendum No. 1 attached hereto and made a part hereof.

15. Notices: Any notice given hereunder shall be deemed to have been properly given when deposited in the United States mail in a sealed envelope, registered and postage prepaid, addressed to Corporation at 811 Vermont Avenue, N. W., Wash-

Exhibit G—(Continued)

ington 25, D. C., or to Shell at 100 Bush Street, San Francisco, California, as the case may be.

In Witness Whereof, the parties hereto have caused this agreement to be executed as of the day and year first hereinabove written.

DEFENSE SUPPLIES
CORPORATION,

By /s/ STUART K. BARNES,
Vice President.

SHELL OIL COMPANY,
INCORPORATED,

By /s/ N. CLULOW,
Vice President.

By /s/ A. R. BRADLEY,
Assistant Secretary.

EXHIBIT H

Defense Supplies Corporation
811 Vermont Ave., N.W.
Washington, D. C.

No. 15-S-62

CONTRACT

Seller: Defense Supplies Corporation, 811 Vermont Ave., N. W., Washington, D. C., agrees to sell,

Buyer: Wilshire Oil Company, Inc., 1206 Maple Ave., Los Angeles, California, agrees to buy,

Material: Benzol meeting specifications of indus-

trial pure benzol, designated as Barrett No. C-2 specifications, dated May 1, 1936.

Quantity: Indefinite, depending on Buyer's requirements, allocations by the War Production Board, and availability of Seller's material of quality indicated.

Price: 17 cents a gallon, f.o.b. tank cars or tank trucks at Seller's storage leased from Shell Oil Company, Inc., at Wilmington, California.

Shipment: Shipments will be arranged by the Buyer, the Seller to make the material available at point of origin upon receipt and acceptance of Buyer's purchase order. Tanker shipments will be arranged by Seller.

Measurement: All shipments shall be corrected to volume at 60°F. with a temperature correction factor of .00065 per degree Fahrenheit. Barge and tanker shipments shall be measured by commercial inspectors engaged by Seller at Buyer's expense unless such inspection is expressly waived by the Buyer, in which case Seller's measurement shall control. Rail or truck shipments shall be measured on the basis of volume in cars or trucks.

Payment: Cash, promptly upon receipt of Seller's invoices supported by evidence of the quantity shipped.

Special Conditions:

1. Buyer is not obligated to purchase nor Seller to supply any fixed amount of material under this contract it being understood that this agreement defines the terms of such purchases as may be made until cancellation of this contract.

2. Either party may cancel this contract upon notice in writing to the other.

3. No Member of or Delegate to the Congress of the United States shall be admitted to any share or part of this contract, or to any benefit arising therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. Buyer agrees that he will not discriminate against any employee [76] or applicant for employment because of race, creed, color, or national origin, and will include a similar provision in all contracts entered into with others in the performance of this Agreement.

4. All material purchased under this contract will be used by Buyer in the manufacture of cumene, for use by or as directed by the United States government. It is understood that no tax is included in the purchase price. Buyer agrees to furnish Seller with satisfactory certificate of exemption covering such taxes as may be applicable.

Executed in quadruplicate.

WILSHIRE OIL COMPANY, INC.,

Buyer.

By /s/ M. A. (Signature illegible),

Vice President.

Date: 11/26/43.

DEFENSE SUPPLIES

CORPORATION,

(GS) Seller.

By /s/ STUART K. BARNES,

Vice President.

Date: 11/16/43.

EXHIBIT I

Defense Supplies Corporation

811 Vermont Ave., N. W.

Washington, D. C.

No. 15-S-69

CONTRACT

Seller: Defense Supplies Corporation, 811 Vermont Ave., N. W., Washington, D. C., agrees to sell,

Buyer: Richfield Oil Corporation, Richfield Building, Los Angeles, California, agrees to buy,

Material: Benzol meeting specifications of industrial pure benzol, designated as Barrett No. C-2 specifications, dated May 2, 1936.

Quantity: Indefinite, depending on Buyer's requirements, allocations by the War Production Board, and availability of Seller's material of quality indicated.

Price: 17 cents per gallon, f.o.b. tank cars or tank trucks at Seller's storage leased from Shell Oil Company, Inc., at Wilmington, California.

Shipment: Shipments will be arranged by the Buyer, the Seller to make the material available at point of origin upon receipt and acceptance of Buyer's purchase order. Tanker shipments will be arranged by Seller.

Measurement: All shipments shall be corrected to volume at 60°F. with a temperature correction factor of .00065 per degree Fahrenheit. Barge and

tanker shipments shall be measured by commercial inspectors engaged by Seller at Buyer's expense unless such inspection is expressly waived by the Buyer, in which case Seller's measurement shall control. Rail or truck shipments shall be measured on the basis of volume in cars or trucks.

Payment: Cash, promptly upon receipt of Seller's invoices supported by evidence of the quantity shipped.

Special Conditions:

1. Buyer is not obligated to purchase nor Seller to supply any fixed amount of material under this contract it being understood that this agreement defines the terms of such purchases as may be made until cancellation of this contract.

2. Either party may cancel this contract upon notice in writing to the other.

3. No Member of or Delegate to the Congress of the United States shall be admitted to any share or part of this contract, or to any benefit arising therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its [78] general benefit. Buyer agrees that he will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and will include a similar provision in all contracts entered into with others in the performance of this Agreement.

4. All material purchased under this contract will be used by Buyer in the manufacture of cumene,

for use by or as directed by the United States government. It is understood that no tax is included in the purchase price. Buyer agrees to furnish Seller with satisfactory certificate of exemption covering such taxes as may be applicable.

Executed in quadruplicate.

.....,

Buyer.

By /s/ A. M. KEELEY,
Vice President.

Date: 12/15/43.

DEFENSE SUPPLIES
CORPORATION

Seller,

By /s/ STUART K. BARNES,
Vice President.

Date: 12/3/43.

GS

EXHIBIT J

Defense Supplies Corporation
811 Vermont Ave., N. W.
Washington, D. C.

No. 15-S-61

CONTRACT

Seller: Defense Supplies Corporation, 811 Vermont Ave., N. W., Washington, D. C. agrees to sell,
Buyer: Rubber Reserve Company, 811 Vermont Ave., N. W., Washington, D. C., agrees to buy,

Material: Benzol meeting specifications of industrial pure benzol, designated as Barrett No. C-2 specifications, dated May 1, 1936.

Quantity: Indefinite, depending on Buyer's requirements, allocations by the War Production Board, and availability of Seller's material of quality indicated.

Price: 17 cents a gallon f.o.b. tank cars or tank trucks at Seller's storage leased from the Shell Oil Company, Inc., at Wilmington, California.

Shipment: Shipments will be arranged by the Buyer, the Seller to make the material available at point of origin upon receipt and acceptance of Buyer's purchase order. Tanker shipments will be arranged by Seller.

Measurement: All shipments shall be corrected to volume at 60°F. with a temperature correction factor of .00065 per degree Fahrenheit. Barge and tanker shipments shall be measured by commercial inspectors engaged by Seller at Buyer's expense unless such inspection is expressly waived by the Buyer, in which case Seller's measurement shall control. Rail or truck shipments shall be measured on the basis of volume in cars or trucks.

Payment: Cash, promptly upon receipt of Seller's invoices supported by evidence of the quantity shipped.

Special Conditions:

1. Buyer is not obligated to purchase nor Seller to supply any fixed amount of material under this

contract it being understood that this agreement defines the terms of such purchases as may be made until cancellation of this contract.

2. Either party may cancel this contract upon notice in writing to the other.

3. No Member of or Delegate to the Congress of the United States shall be admitted to any share or part of this contract, or to any benefit arising therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. Buyer agrees that he will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and will include a similar provision in all contracts entered into with others in the performance of this Agreement. [52]

4. All material purchased under this contract will be used by Buyer in the manufacture of styrene, for use by or as directed by the United States government. It is understood that no tax is included in the purchase price. Buyer agrees to furnish Seller with satisfactory certificate of exemption covering such taxes as may be applicable.

Executed in Sextuplicate.

RUBBER RESERVE COMPANY

Buyer,

By /s/ H. J. KLOSSNER,

President.

Date: Dec. 11, 1943.

DEFENSE SUPPLIES

CORPORATION,

Seller.

By /s/ STUART K. BARNES,

Vice President.

GS

Date: 11/30/43.

EXHIBIT K

CHARTER OF RUBBER RESERVE
COMPANY

Whereas, in order to aid the government of the United States in its national-defense program, Reconstruction Finance Corporation is authorized, pursuant to Section 5d of the Reconstruction Finance Corporation Act, as amended by the Act approved June 25, 1940, when requested by the Federal Loan Administrator, with the approval of the President, to create corporations with power to produce, acquire and carry strategic and critical materials, as defined by the President; and

Whereas, The President has defined rubber as a strategic material; and

Whereas, The Federal Loan Administrator has requested and the President has approved the creation of a corporation of the character described in paragraph Third hereof;

Now, Therefore, It is stated that:

First, Reconstruction Finance Corporation does hereby create a corporation to be known as Rubber Reserve Company.

Second, the location of the principal office of the corporation shall be in the City of Washington, District of Columbia.

Third, the objects and purposes of the corporation shall be to perform all acts and transact all business which is permitted legally to be done, performed, and transacted in [54] connection with the buying, selling, acquiring, storing, carrying, producing, processing, manufacturing and marketing of natural raw or cured rubber, as well as related materials and substances; and the corporation shall have power to do all things incidental thereto and necessary or appropriate in connection therewith, including, but without limitation, the power to borrow and hypothecate, to adopt and use a corporate seal, to make contracts, to acquire, hold and dispose of real and personal property necessary and incident to the conduct of its business and to sue and be sued in any court of competent jurisdiction. The corporation, including its franchise, its capital, reserves, surplus, income and assets shall be exempt from all taxation now or hereafter imposed by the United States, or

any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except that any real property of the corporation shall be subject to State, Territorial, county, municipal or local taxation to the same extent according to its value as other real property is taxed; the corporation shall be entitled to the free use of the United States mails; and, in addition to or in limitation of the privileges and immunities belonging to it as an instrumentality of the United States government, the corporation shall in all other respects be possessed of such privileges and immunities as are conferred upon Reconstruction Finance Corporation under the Reconstruction Finance Corporation Act, as amended. [55]

Fourth, the total authorized capital stock of the corporation shall be Five Million Dollars (\$5,000,000), consisting of 50,000 shares of the par value of \$100 each, of which One Million Dollars (\$1,000,000) shall be paid in immediately and the balance as called. Such stock shall be of one class, shall be non-assessable and shall be issued only for cash fully paid. Reconstruction Finance Corporation shall subscribe for all of the capital stock of the corporation. Such stock shall not be transferable, except with the approval of Reconstruction Finance Corporation (and then only to the extent that Reconstruction Finance Corporation deems it desirable that any such stock be transferred to members of the rubber industry for the purpose of furnishing assurance of their cooperation in the conduct of the activities of the corporation, facilitating the ultimate liquidation

of the assets of the corporation, and thereby protecting the interests of the United States Government acting by and through Reconstruction Finance Corporation).

Fifth, the corporation shall have existence until dissolved by Reconstruction Finance Corporation.

Sixth, the stockholders shall not be liable for the debts, contracts or engagements of the corporation except to the extent of unpaid stock subscriptions.

Seventh, the corporation shall be managed by its Board of Directors, officers and agents pursuant to this Charter and the provisions of the By-Laws of the corporation as prescribed by Reconstruction Finance Corporation. [56]

Eighth, this Charter and the By-laws may be amended at any time by the Board of Directors of the corporation, upon approval of Reconstruction Finance Corporation.

In Witness Whereof, Reconstruction Finance Corporation has caused this Charter to be signed by its executive officer, Chairman of its Board of Directors, attested by its Secretary, and has caused its seal to be hereunto affixed this 28th day of June, 1940.

RECONSTRUCTION FINANCE
CORPORATION,

By /s/ EMIL SCHRAM,
Chairman.

Attest:

/s/ G. R. COOKSEY,
Secretary.

EXHIBIT L

RUBBER RESERVE COMPANY BY-LAWS
OFFICES

1. The principal office shall be in the City of Washington, District of Columbia. The corporation shall also have branch offices at such other places as the Board of Directors may from time to time designate.

SEAL

2. The corporate seal shall have inscribed thereon the name of the corporation and the date of its creation. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced.

BOARD OF DIRECTORS

3. The directors shall be not less than six nor more than ten in number, as the Board of Directors of Reconstruction Finance Corporation may provide. The directors shall be appointed by Reconstruction Finance Corporation. Each director shall hold office until and including the thirty-first day of December of the year in or for which appointed and until his successor shall be duly appointed and qualified.

MEETINGS OF THE BOARD

4. Regular meetings of the Board of Directors shall be held at such time and place as the Board may prescribe. Special meetings may be called by the President or Secretary. At any meeting of the

Board a majority of the duly appointed and qualified directors shall constitute a quorum for the transaction of any business that may come before the meeting.

COMMITTEES OF THE DIRECTORS

5. The Board of Directors shall select from its number an Executive Committee, consisting of such members of the Board as may be deemed advisable, who shall have, possess and exercise all of the power and authority of the Board of Directors at such times as the Board of Directors is not in session, and also such power and authority as may be delegated to it by the Board of Directors. The Board of Directors may create such additional committees and confer upon them such duties and powers as it may deem advisable.

COMPENSATION OF DIRECTORS

6. The directors of the corporation shall receive no fees or honorarium for attendance at meetings but shall be entitled to be reimbursed in accordance with the Standardized Government Travel Regulations, as amended, for travel expenses [58] incurred in attending meetings of the Board of Directors and meetings of the committees of which they are members, and any other travel expenses incurred by them on official business.

OFFICERS

7. The officers of the corporation, who shall be appointed by the Board of Directors to serve until

their successors shall be duly appointed and qualified, shall be: a Chairman of the Board of Directors, a president, one or more vice-presidents, a secretary, a treasurer, a general counsel, and such other officers and agents as the Board of Directors may deem advisable. The president shall be a director. The salaries and compensation of all officers, agents and employees shall be fixed by the Board of Directors and paid by Reconstruction Finance Corporation and reimbursed by the corporation. Any officer, agent or employee may be removed by the Board of Directors at any time, with or without cause.

CHAIRMAN OF THE BOARD

8. The Chairman of the Board of Directors shall have general supervision over the business of the corporation and shall preside at meetings of the Board of Directors.

PRESIDENT

9. The President shall be the chief executive officer of the corporation and, in the absence of the Chairman of the Board, shall preside at meetings of the Board. Except as hereinafter provided, or as otherwise prescribed by the Board of Directors or Executive Committee, all contracts and other documents which the corporation may be required to execute in the conduct of its business shall be signed by the President.

VICE-PRESIDENT

10. In the absence or disability of the President,

the Vice-President (or Vice-President, in the order of their seniority if more than one) shall perform the duties and execute the powers of the President. They shall perform such other duties as the Board of Directors may prescribe.

SECRETARY

11. The Secretary shall attend all meetings of the Board of Directors and Executive Committees and record the minutes of all such meetings. He shall give, or cause to be given, notice of all such meetings; shall perform such duties as may be prescribed by the Board of Directors or the Executive Committee, and all other duties incident to the office of Secretary. He shall keep in safe custody the seal of the corporation, and shall affix the same to any instrument requiring it. When so affixed, the seal shall be attested by the signature of the Secretary.

TREASURER

12. The Treasurer shall have the custody of the corporate funds and securities and shall keep a full and accurate account of all financial transactions of the corporation, and shall deposit with [59] Reconstruction Finance Corporation all funds for the account of the corporation or in such other depositories as may be designated or approved for the purpose by Reconstruction Finance Corporation. He shall disburse the funds of the corporation pursuant to the authority of the Board of Directors or Executive Committee of the corporation, and shall render to the Board of Directors or Executive Committee of

the corporation, whenever so required, an account of all his transactions as Treasurer and of the financial condition of the corporation. He shall, if so required by the corporation, give a bond in a form and sum satisfactory to the corporation and Reconstruction Finance Corporation.

GENERAL COUNSEL

13. The General Counsel shall be the chief consulting officer in all legal matters and will supervise such matters for the corporation.

FISCAL YEAR

14. The fiscal year shall end on the thirty-first day of December in each year.

OATH OF OFFICE

15. All directors, and officers (and other agents or employees of the corporation, when so required by the Board of Directors or Executive Committee) shall subscribe to the oath of office prescribed by Section 1757, Revised Statutes of the United States.

CHECKS

16. Unless otherwise prescribed by the Board of Directors, all checks and drafts for authorized disbursements issued by the corporation shall be signed by the Treasurer or an Assistant Treasurer acting under his direction. Reconstruction Finance Corporation at the request of the Board of Directors of the corporation shall certify to the Treasurer of the United States the names of the incumbents of all

offices, the holders whereof have such signatory powers.

STOCK CERTIFICATES

17. The stock certificates or receipts for payments for or on account of the stock subscribed, shall be signed by the President or a Vice-President and by the Secretary of the corporation.

EXPENSES

18. All expenses incurred in connection with the operation of the corporation shall be supervised and paid in such manner as the Board of Directors or Executive Committee may from time to time prescribe.

NOTICES

19. Whenever under the provisions of these By-laws any notice is required to be given, it shall not be construed to mean [60] personal notice, but such notice may be given by mail, telephone or telegraph. Any requirement as to notice may be waived in writing by the party entitled thereto.

AMENDMENTS

20. These By-laws may be altered or amended or repealed by the Board of Directors of the corporation at any meeting of such Board, upon approval of the Board of Directors of Reconstruction Finance Corporation. [61]

EXHIBIT M

SUPPLY CONTRACT

This amended contract made and entered into as of the 20th day of December, 1943, by and between Defense Supplies Corporation, a corporation created by Reconstruction Finance Corporation pursuant to Section 5d of the Reconstruction Finance Corporation Act, as amended, (hereinafter referred to as "Buyer") and Wilshire Oil Company, Inc., a corporation of California, with offices in Los Angeles, California, (hereinafter referred to as "Seller").

Witnesseth:

Whereas, the production of 100 octane aviation gasoline and other aviation gasoline conforming to the specifications provided for in Appendix A annexed hereto and made a part hereof (such 100 octane aviation gasoline and such other aviation gasoline being herein called "aviation gasoline") and the expansion of refining capacity for such production within the United States are important to the interest of the National Defense Program of the Government of the United States; and

Whereas, a Supply Contract was entered into on the 29th day of April, 1942, by and between Buyer and Seller (hereinafter referred to as the "Original Supply Contract") providing for the purchase and sale of 100 octane aviation gasoline to be produced in certain facilities to be constructed at Seller's refinery at Norwalk, California; and

Exhibit M—(Continued)

Whereas, Seller, simultaneously with the execution of the Original Supply Contract, entered into an Agreement of Lease with Defense Plant Corporation, a subsidiary of Reconstruction [90] Finance Corporation, (hereinafter referred to as the "Agreement of Lease") to construct at its said refinery (hereinafter sometimes called "Plant No. 1"), the facilities aforesaid which were then estimated to be capable of manufacturing 1,900 barrels per day of 100 octane aviation gasoline on a basis of 3 cc. of tetra-ethyl lead per gallon (hereinafter sometimes called the "Original Defense Plant Facilities"), said facilities to be operated by Seller under lease from Defense Plant Corporation; and

Whereas, it is now estimated that the Original Defense Plant Facilities are capable of manufacturing approximately 2,683 barrels per calendar day of 100 octane aviation gasoline conforming to specifications set forth in Item 1 of Appendix A hereof; and

Whereas, Seller is simultaneously entering into an Amended Agreement of Lease with Defense Plant Corporation which amends the Agreement of Lease and by the terms of which Seller agrees to construct at its said refinery, in addition to the Original Defense Plant Facilities, certain additional facilities which, it is estimated, will increase the production of the Defense Plant Facilities to approximately 3,100 barrels per calendar day of 100 octane aviation gasoline conforming to specifications set

Exhibit M—(Continued)

forth in Item 1 of Appendix A hereof, when blended with 146 barrels per calendar day of purchased isopentane. Said additional facilities are hereinafter sometimes referred to as "Additional Defense Plant Facilities." The Original Defense Plant Facilities and the Additional Defense Plant Facilities are herein sometimes collectively referred to as the "Defense Plant" or the "Defense Plant Facilities" or "Plant No. 2": (the Agreement of Lease as amended, being hereinafter referred to as the "Amended Agreement of Lease") and [91]

Now, Therefore, in consideration of the mutual covenants herein contained, it is agreed by and between the parties hereto that the Original Supply Contract be and the same is hereby amended to read as follows:

1. Defense Plant Facilities to Be Operated by Seller.

Seller shall, as expeditiously as possible, subject to the terms, conditions, and provisions of the Amended Agreement of Lease with Defense Plant Corporation provide all things necessary for operation of said Defense Plant Facilities at or adjacent its refinery at Norwalk, California, and place said Defense Plant Facilities in operation. Said facilities are estimated but not guaranteed to be of sufficient capacity to produce, after completion of the Original Defense Plant Facilities but prior to the completion of the Additional Defense Plant Facilities, approximately 2,683 barrels per calendar day, and

Exhibit M—(Continued)

after the completion of the Additional Defense Plant Facilities (when adding 146 barrels per calendar day of purchased isopentane) approximately 3,100 barrels per calendar day of 100 octane aviation gasoline conforming to the specifications set forth in Item 1 of Appendix A hereof, and throughout the period of this contract Seller shall use its best efforts to continue the operation thereof in an efficient manner. During the period of this contract, Seller will not, without the consent of Buyer and Defense Plant Corporation, remove, alter, modify or in any manner deal with the said facilities so as to hinder, lessen or make impossible the production of aviation gasoline.

2. Notice and Sale of Products.

(a) The method of computing rental payable to Defense Plant Corporation for the Defense Plant Facilities is set forth and explained in the explanation of symbol "C" of Appendix B hereof. Rent becomes payable for the alkylation unit and for [92] all equipment used in connection therewith from and after December 21, 1943. Rent for additional units and for equipment used in connection with such additional units shall begin to accrue when and as operation and use for the designed purpose of the unit in question is undertaken by Seller. In order that Buyer may be notified when such use is so undertaken with respect to each unit; Seller agrees to promptly notify Buyer whenever rental

Exhibit M—(Continued)

first becomes payable with respect to each additional unit of the Defense Plant Facilities.

(b) Seller shall produce aviation gasoline by means of the Defense Plant Facilities, conforming to the specifications set forth in Appendix A hereof, and/or Components thereof, as directed by Buyer, and Seller shall offer to sell to Buyer all of the aviation gasoline and/or Components so produced, deliveries of aviation gasoline ordered by Buyer to commence as soon as practicable after the facilities have been put into operation. Buyer shall be obligated, subject to the provisions of subparagraph (d) of this paragraph 2, and subject to the provisions of paragraph 3 hereof, to purchase aviation gasoline produced by said facilities in quantities approximating the current rate of production, insofar as feasible, of such gasoline conforming to the specifications set forth in item 1 of Appendix A hereof (or in equivalent quantities of aviation gasoline conforming to any or all of the specifications provided for in Appendix A hereof), and shall have the right to purchase all of such aviation gasoline as aforesaid but shall not be obligated to purchase more than 2,171 barrels, daily average of such gasoline, conforming to the specifications as aforesaid (or equivalent quantities of gasoline conforming to any or all of the specifications provided for in Appendix A hereof), in any month during the Original Period and the Extension Period of this contract. [93]

(c) Seller agrees that, to the extent of its abil-

Exhibit M—(Continued)

ity to do so using the Defense Plant Facilities, Seller will purchase available Components of and charge stocks for the manufacture of 100 octane aviation gasoline from other manufacturers of such Components and charge stocks at the request of Buyer, and utilize such Components and charge stocks with Components and charge stocks manufactured by Seller to produce 100 octane aviation gasoline conforming to the specifications set forth in Item 1 of Appendix A hereof or such other specifications of Appendix A as Buyer may direct. Such Components and charge stocks shall be purchased currently in amounts, from sources and at prices approved by Buyer, and shall be delivered to the Defense Plant Facilities. In the event Buyer so requests Seller to purchase such Components and charge stocks, Seller shall sell and Buyer shall buy the entire 100 octane aviation gasoline produced therefrom; subject, however, to termination of this contract in accordance with the provisions of paragraph 3 hereof.

(d) Buyer shall have the option, exercisable at any time and from time to time during the life of this contract, to purchase from Seller, or Buyer may direct Seller to sell to third parties specified by Buyer any Components for the manufacture of 100 octane aviation gasoline which may be produced in the Defense Plant Facilities and any charge stocks in excess of Seller's current requirements for such charge stocks in connection with the manufacture of aviation gasoline. Seller shall sell such Components and charge stocks to Buyer or to such

Exhibit M—(Continued)

third parties at prices and in amounts to be specified by Buyer. Seller agrees to accept the credit rating of Buyer's designees unless and until it notifies Buyer that it desires indemnification against nonpayment of its invoices in which case Buyer shall execute such letter of indemnification or designate another [94] purchaser having a credit rating satisfactory to Seller.

(e) As used in this contract, the term "Components" shall mean all substances and materials which are incorporated into 100 octane aviation gasoline by Seller by blending operations which comprise a physical mixture only, without chemical change, but shall not include inhibitors or tetraethyl lead.

3. Duration of Contract and Right to Terminate.

This contract shall be for a period commencing on the date hereof and ending at midnight on December 31, 1946 (hereinafter called the "Original Period"), provided, however, that if this contract shall be extended as provided in paragraph 12 hereof, then the period of this contract shall include the period of such extension (hereinafter called the "Extension Period") in accordance with the provisions of said paragraph 12. Buyer shall have the right in its sole discretion to terminate this contract or any extensions thereof at any time, on notice to Seller, and in the event of termination of the aforesaid Amended Agreement of Lease between Seller and Defense Plant Corporation this

Exhibit M—(Continued)

contract or any extension thereof shall automatically terminate. Wherever in this contract, including the appendices, the words "the period of this contract" are used, such words shall be construed to include the Extension Period as well as the Original Period.

4. Price.

The price to be paid by Buyer for aviation gasoline produced hereunder and the amount of money to be paid by Buyer for aviation gasoline hereunder or the amount of money to be paid by Buyer or by Seller, as the case may be, for any calendar month in which aviation gasoline is not made, shall be determined in accordance with Appendix B hereof. Determination of such price and such amount of money in accordance with Appendix [95] B hereof shall be made from 7 A.M., December 21, 1943, the time at which Seller represents that oil was first charged to the first catalytic unit of the Defense Plant Facilities for the purpose of making product; said date and hour being hereinafter referred to as the "Start Up Date."

5. Buyer or Seller, as the case may be, shall pay promptly, but not later than the 20th day of each calendar month, all money due hereunder for operations conducted during the preceding calendar month, the amount of each such payment to be determined in accordance with the provisions of Appendix B hereof. On or before the 10th day of each calendar month in which such payments are

Exhibit M—(Continued)

to be made, Seller shall render to Buyer a statement setting forth, 1) the number of gallons of aviation gasoline produced hereunder during the preceding calendar month, 2) the cost of production thereof per gallon, 3) the total amount to be paid therefor, 4) the number of gallons of aviation gasoline delivered hereunder during said preceding calendar month, 5) the number of gallons of charge stocks and Components purchased during the preceding calendar month and the number of gallons of purchased Components incorporated in aviation gasoline produced hereunder during the preceding calendar month and from whom such Components and charge stocks were purchased, 6) the price per gallon of each such purchased charge stock or Component paid or payable by Seller, 7) the number of gallons of charge stocks or Components sold by Seller during the preceding calendar month, the type of charge stocks and components so sold and to whom sold, specifying the number of gallons of each such type, 8) the price per gallon for which each such charge stock or Component was sold, 9) the total amount received by Seller during the preceding month for charge stocks and Components sold during said month or during any prior [96] month, specifying the gallonage reported pursuant to 7 hereof, for which such payment was received, 10) the number of gallons of each by-product sold during the preceding calendar month, the price for which each such by-product was sold and the amount of money received for by-products during said

Exhibit M—(Continued)

month, 11) the number of gallons of aviation gasoline held in storage hereunder at the beginning and at the end, respectively, of said preceding calendar month, 12) the number of gallons of Components and charge stocks produced in the Defense Plant Facilities held in storage at the beginning and at the end, respectively, of said preceding calendar month, and 13) all other information which may be needed by Buyer in order to determine and substantiate the sums due under paragraph 4 hereof and under Appendix B hereof. Each such statement shall be certified as to quantities and qualities shown, by a licensed inspector, or other inspector, satisfactory to Buyer. The inspection procedure and form of certificate shall conform to usual industry practice. Buyer may, at its option, waive the requirements of inspection by a licensed inspector or other inspector, and in such event, and in case of shipments made from the Defense Plant Facilities when no licensed inspector or other inspector is available, Seller shall furnish its own certificates of inspection. The amount, if any, by which the payment due Seller from Buyer for aviation gasoline produced during said preceding calendar month exceeds the amount computed by multiplying the number of gallons of aviation gasoline delivered by Seller to Buyer during said calendar month by the above-mentioned price per gallon of aviation gasoline produced during said month shall constitute an advance payment by Buyer to Seller for aviation gasoline and Components thereof produced and

Exhibit M—(Continued)

placed in storage by Seller during the preceding month to be delivered to Buyer. Seller shall place all aviation gasoline produced hereunder in [97] storage immediately upon production thereof to await delivery to Buyer. Copies of the certificates of inspection referred to in paragraph 9 hereof shall accompany the aforesaid monthly statements.

On or before the 10th day of each calendar month in which such payments are to be made, Seller shall render to Buyer a statement setting forth separately and in reasonable detail (1) Seller's gasoline refinery net back (2) Seller's adjusted gasoline refinery net back, and (3) Seller's fuel oil refinery net back, all as hereinafter defined in Appendix B, for the calendar month preceding the calendar month for which payment is to be made Seller under this paragraph. Seller shall advise Buyer of any change made in the price of fuel gas sold to Seller by Southern California Gas Company at Seller's Norwalk refinery not later than the 10th day of the calendar month following the calendar month in which such change occurred.

6. Deliveries.

Buyer shall take deliveries of said aviation gasoline every month during the period of this contract, in tank cars, or tank trucks, to be supplied by Buyer at its own cost and expense (except as otherwise provided in paragraph 17 hereof), at Seller's plant terminals at Norwalk, California, (hereinafter called the "point of delivery") in quantities ap-

Exhibit M—(Continued)

proximating the current rate of production insofar as feasible, but Buyer shall not be obligated to take deliveries in excess of a daily average of 2171 barrels. Deliveries shall be made in accordance with the delivery conditions at each loading point which currently are in effect with respect to deliveries made at such point to other customers.

Until further notice from Buyer to Seller, for the purposes of this contract, any officer or employee of the War Department or Navy Department, who is properly authorized to accept [98] deliveries of gasoline for his department is hereby nominated as agent for Buyer and authorized to take delivery of aviation gasoline hereunder, to waive the requirements of inspection by a licensed inspector or other inspector and to receipt on behalf on Buyer, in a manner approved by Buyer, for deliveries of such aviation gasoline from Seller to Buyer.

7. Products in Storage.

Under the aforesaid Amended Agreement of Lease between Defense Plant Corporation and Seller, tankage facilities approximating 100,000 barrels capacity will be furnished by Defense Plant Corporation on the Defense Plant site for the storage of aviation gasoline and/or Components produced hereunder. Seller shall not be obligated to provide any additional tankage facilities at the Defense Plant or elsewhere for the storage of such aviation gasoline and/or Components. At the ter-

Exhibit M—(Continued)

mination of this contract Buyer shall be obligated to purchase and pay for, at and for the price provided for in paragraph 4 hereof, all of the aviation gasoline of the specifications set forth in Appendix A hereof produced by Seller pursuant to this contract since the last month in which aviation gasoline was produced and paid for under this contract, and which at the termination of this contract is stored in said tankage facilities, and in addition such aviation gasoline as may be obtained after termination of this contract by blending ingredients of aviation gasoline theretofore produced by Seller pursuant to this contract and which are in Seller's inventory at the time of the termination of this contract, but the aggregate of such purchases required of Buyer shall not exceed 100,000 barrels. At the termination of this contract all undelivered aviation gasoline, if any, of the specifications set forth in Appendix A hereof and produced by Seller pursuant to this contract and paid for by Buyer shall become the [99] property of Buyer. Upon 30 days' notice from Buyer to Seller before the termination of this contract, Seller shall endeavor insofar as possible to arrange its production so that there will be a minimum of aviation gasoline stored in said tankage facilities at the termination of this contract. Buyer shall give to Seller, at its refinery at Norwalk, California, a reasonable advance notice of all specific deliveries of aviation gasoline and/or Components to be made under this contract, said notice to specify the volume of aviation gaso-

Exhibit M—(Continued)

line and/or Components and shipping instructions therefor, and Seller shall make delivery thereof in the volume specified if within its ability to do so.

8. Title to Products.

Seller warrants full and unencumbered title to all aviation gasoline and Components delivered under this contract. Title to said aviation gasoline shall pass from Seller to Buyer upon delivery of the aviation gasoline at the intake pipe of the means of transportation f.o.b. the point of delivery from which shipment is made. However, risk of loss on finished aviation gasoline produced hereunder by the Defense Plant Facilities shall be with Buyer from the time it is produced and placed in storage. Seller shall use due care in the storage of such aviation gasoline.

9. Inspections.

(a) On shipments made from the Defense Plant Facilities, where licensed inspectors or other inspectors are available, Seller shall furnish certificates of inspection by a licensed inspector or other inspector satisfactory to Buyer which shall set forth the quantity and quality of each shipment of aviation gasoline. The inspection procedure and the form of the certificates shall conform to usual industry practice. The certificates of inspection shall be issued in five counterparts, one set of which shall accompany the relative shipment, a second set of which shall be forwarded forthwith to Buyer, a third set of which shall be submitted [100] to Buyer

Exhibit M—(Continued)

with the monthly statement required by paragraph 5 hereof, a fourth set of which shall forthwith be delivered to Seller, and a fifth set of which shall be delivered forthwith to the authorized officer or employee of the War Department or Navy Department referred to in paragraph 6 hereof. Buyer may, at its option, waive the requirements of inspection by a licensed inspector or other inspector, and in such event, and in case of shipments made from the Defense Plant Facilities when no licensed inspector or other inspector is available, Seller shall furnish its own certificates of inspection.

(b) Inspection as to quantity of delivery into tank cars and tank trucks shall be made in accordance with the accepted practices of the trade. Adjustment in volume to a sixty degree Fahrenheit (60°F.) basis shall be made in accordance with the correction tables of the United States Bureau of Standards prevailing at the time of delivery; provided, however, that in case of each delivery of a quantity of less than three thousand five hundred (3,500) gallons into a tank truck or motor transport, no adjustment shall be made.

(c) Inspection as to quality shall be made according to the latest standard or tentative standard methods of the American Society for Testing Materials wherever applicable and the product shall conform as to quality with the specifications set forth in Appendix A hereof.

(d) The certificates of inspection of quantity

Exhibit M—(Continued)

and quality shall be accepted by Buyer and Seller as conclusive for purposes of invoice and payment, and all other purposes of this contract.

(e) Should any such certificate indicate a failure of the product shipped to conform completely to the specifications [101] of quality, Buyer may accept delivery of the product and claim an adjustment for such deficiency, provided, that in the event that such a claim is made Seller shall be notified and given an opportunity to inspect said shipment within five (5) days after arrival at destination but in any event before unloading.

(f) Buyer and its representatives shall have free and unrestricted access to the Defense Plant Facilities at all reasonable times in connection with such tests and inspections and likewise Seller shall have the right to have its own representatives present at all such tests and inspections, provided that, unless authorized in writing by Seller, not more than two representatives of Buyer shall have access at any time to said Facilities for the purposes of this paragraph 9.

10a. Force Majeure.

This contract is expressly conditioned upon and subject to all of the terms and provisions of the aforesaid Amended Agreement of Lease between Defense Plant Corporation and Seller pertaining to the construction, installation, operation, maintenance and/or repair of the Defense Plant Facilities

Exhibit M—(Continued)

and other facilities referred to therein, and Seller shall not be liable for damages or otherwise for delays or defaults in its performance under this contract where relieved under the terms and provisions of said Amended Agreement of Lease from the construction, installation, operation, maintenance and/or repair of such facilities or any part thereof.

Seller shall not be liable for delays or defaults in performance under this contract due to causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God or of the public enemy, acts or requests of the Government or of any governmental officer or agent purporting to [74] act under authority, floods, fires, storms, epidemics, quarantine restrictions, strikes, freight embargoes and failures, exhaustion or unavailability, or delays in delivery, of any product, service or material necessary in the construction of the facilities contemplated by paragraph 1 hereof or in the manufacture and delivery of aviation gasoline deliverable hereunder, including crude oil, supplies, raw materials, ingredients and lead tetraethyl.

10b. Right to Periodic Review of Contract.

It is understood that performance by Seller under this contract and the price of aviation gasoline hereunder are predicated upon continuous, substantially normal operation of Seller's Norwalk refinery and the Defense Plant Facilities.

If through causes or conditions beyond Seller's or Buyer's control or knowledge, including the method

Exhibit M—(Continued)

of pricing petroleum materials passing to and from the Defense Plant Facilities, and without negligence or bad faith on the part of Seller or Buyer, such causes or conditions shall so affect operations or conditions at said refinery or said Defense Plant Facilities that, in the opinion of either Buyer or Seller, the contract shall have become inequitable, either party shall have the right, which shall not be exercised by the same party more than once in any six (6) months period, to give the other party written notice of such situation, fully explaining same. In such event the parties shall make an earnest effort to arrive at an equitable and mutually satisfactory adjustment of said price or other provisions of this contract, but, failing this, the party giving such notice shall have the right to cause the matter to be arbitrated and thereby finally determined according to the arbitration procedure specified in paragraph 13 hereof. The arbitrators shall [75] have the power to make an award in accordance with their determination of such matter. In the event that such matter is so determined by arbitration, such determination and award may be retroactive to the time when such causes became effective.

11. Separate Accounting.

So long as this contract or any extension thereof remains in effect Seller shall maintain a system of separate accounting satisfactory to Buyer, of the production and sales of all aviation gasoline produced under the terms of this contract and of the

Exhibit M—(Continued)

purchase and sale of any Components and charge stocks pursuant to the provisions of paragraph 2 hereof and agrees to make such records available for inspection by Buyer during the term of this contract and for a period of at least three (3) years after termination of this contract. Buyer and its representatives shall have free and unrestricted access to such records at all reasonable times for inspection and audit at the place where such records are kept by Seller provided that, unless authorized in writing by Seller, not more than five (5) representatives of Buyer shall have access to such records at any one time for the purposes of this paragraph 11.

12. Extension of Contract.

Buyer shall have the option to extend this contract for, but not longer than, two (2) successive yearly periods beyond the Original Period by giving notice in writing to Seller of the exercise of such option at least ninety (90) days prior to the end of the Original Period for the first yearly extension, and at least ninety (90) days prior to the end of the first yearly extension for the second yearly extension. In the event of, and during such extension or extensions, all the provisions of this contract, except those [76] not then applicable, shall be and remain in full force and effect.

13. Arbitration.

In case of any disagreement between Buyer and Seller as to any right, obligation, term or provision of this contract, including any disagreement as to

Exhibit M—(Continued)

the price to be paid for aviation gasoline to be delivered hereunder, the parties shall make an earnest effort to settle such disagreement to their mutual satisfaction. If such effort be unsuccessful, then either party may cause such disagreement to be submitted for determination by arbitrators, none of whom shall be connected with either party hereto, by giving to the other party a notice in writing or by telegraph to that effect and giving the name of the arbitrator chosen by the party giving the notice. Within five (5) days of receipt of such notice of arbitration, the other party shall, in writing or by telegraph, name the arbitrator chosen by such party, and within five (5) days after the appointment of the second arbitrator, an additional arbitrator shall be selected by the two (2) arbitrators theretofore appointed, provided, however, if one of the parties shall have failed to appoint an arbitrator as hereinbefore provided, the sole arbitrator shall arbitrate the disagreement alone. If two (2) arbitrators shall have been appointed as aforesaid and shall have failed to select an additional arbitrator within the above-stated time, the additional arbitrator shall be appointed by the Senior Judge of the United States Circuit Court of Appeals for the Ninth Circuit, acting in his individual capacity, upon application therefor by either of the parties. The decision of a majority of the arbitrators so appointed, or if either party shall have failed to appoint its arbitrator as aforesaid, the decision of [77] the sole arbitrator shall be final and binding on the parties for all pur-

Exhibit M—(Continued)

poses. Each party shall pay the cost and expenses of the arbitrator appointed by such party, and the other costs and expenses of the arbitration, including the cost and expense of the additional arbitrator, shall be paid by the party to the arbitration whose claim is not sustained or if partially sustained the costs shall be apportioned. Pending such determination of every disagreement as to the price to be paid for aviation gasoline delivered hereunder, Buyer shall, upon contesting any price claimed by Seller to be due, pay the price which Buyer alleges to be due and shall immediately upon such determination pay any balance found by mutual agreement or by said arbitrators to be due.

14. Notices.

All notices given under this contract, except as otherwise provided, shall be directed to the parties as follows: Defense Supplies Corporation, 811 Vermont Avenue, N. W., Washington, D. C.; Wilshire Oil Company, Inc., 1206 Maple Avenue, Los Angeles, California.

Any notice to be given hereunder shall be in writing and may be personally delivered or sent by telegram or registered mail to the party for whom intended at the address of such party as specified above. A notice personally delivered to either party must be personally delivered to an officer thereof. Notice by registered mail shall be deemed to have been given at the expiration of that time after mailing which is normally required by the postal au-

Exhibit M—(Continued)

thorities to make delivery. Telegraphed notice shall be deemed given the day after sending the telegram. Each party shall immediately send to the other by regular mail confirming copies of any notices sent by telegraph or air mail. [78] Either party may by notice given as aforesaid change its address for notices thereafter.

15. Assignability.

This contract shall be binding upon, and shall inure to the benefit of, the successors and assigns of the respective parties hereto; provided, however, neither party shall have the right to assign this contract without the written consent of the other party, except that Buyer may assign to any other agency, department or instrumentality of the Government or wholly Government-owned corporation, in which event Buyer shall remain liable.

16. Statutory Compliance.

In carrying out this contract Seller agrees to comply with, and give all stipulations and representations required by applicable federal laws and further agrees to require such compliances, representations and stipulations with respect to any contract entered into by it with others incidental to or in connection with this contract as may be required by applicable federal laws; and notwithstanding the generality of the foregoing, Seller further agrees that in the performance of this contract it will not discriminate against any employee or applicant for employment because of race, creed, color or national

Exhibit M—(Continued)

origin, and will include a similar provision in all contracts entered into by it with others in connection with such performance.

Seller is a corporation and this contract is made with it for its general benefit and no Member of, or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom in violation of the law of the United States covering such matters. [79]

Seller shall comply with requirements of the Walsh-Healey Act (41 USCA Sections 35-45) insofar as such Act is applicable to this transaction.

Notwithstanding anything herein contained to the contrary, this contract is subject to the provisions of Appendix C attached hereto and hereby made a part hereof.

17. Deliveries to Points Other Than Seller's Plant Terminals.

At the request of Buyer, Seller shall utilize its existing and available facilities for handling, metering and delivering the aviation gasoline purchased by Buyer to points (other than Seller's refinery at which the aviation gasoline was manufactured) designated by Buyer within the marketing area in the continental United States served by Seller, such service to be at the expense of Buyer and at Buyer's risk. In the event of Loss Seller shall make its rec-

Exhibit M—(Continued)

ords available to Buyer to prove the extent and value of such loss.

18. Operator Training.

Seller has arranged for the employment and training of such personnel as may be necessary and approved by Buyer for the efficient operation of the Defense Plant Facilities from and after the date of the notices given in accordance with subparagraph (a) of paragraph 2 hereof. Seller shall continue to conduct such approved operator training program at its own cost and expense. In the event this contract is cancelled by Buyer prior to the expiration of four months from the date on which oil is first charged to the last catalytic unit to be placed in operation for the purpose of making product or prior to October 1, 1944, whichever date is earlier, and such cancellation is for reasons other than the following: [80]

(a) A receiver or trustee is appointed for Seller or its property or Seller makes an assignment for the benefit of creditors or Seller becomes insolvent or a petition is filed by or against Seller pursuant to any of the provisions of the United States Bankruptcy Act, as amended, for the purpose of adjudicating Seller a bankrupt, or for the reorganization of Seller, or for the purpose of effecting a composition or rearrangement with Seller's creditors and any such petition filed against Seller is not dismissed within sixty (60) days; or

(b) Any breach or violation of any of the terms,

Exhibit M—(Continued)

conditions or covenants of this contract by Seller and the failure of Seller to cure such violation within thirty (30) days from the giving of a written notice thereof by Buyer to Seller;

Seller shall, upon such cancellation, submit to Buyer a statement of the cost of the approved operator training program. If upon such cancellation for reasons other than aforesaid, the total cost of the approved operator training program as shown by said statement is more than an amount equal to one half the total amount paid or payable by Buyer to Seller for "E" and "F" for operations prior to the date of such cancellation, Buyer shall, upon receipt of the statement aforesaid, pay to Seller the amount by which said approved operator training program exceeds one half of the total of the "E" and "F" payments computed as aforesaid; provided, however, the amount of the approved operator training program shall in no event exceed \$50,000 and provided further that in the event Seller operates any unit or units of the Defense Plant Facilities at any time during a period of six months following such cancellation (which Seller has a right to do pursuant to the provisions of the Amended Agreement of Lease) Seller shall, upon the commencement of any such operation repay to Buyer a fraction of the amount paid by Buyer to Seller pursuant to this paragraph the numerator of which fraction shall be the cost of training operators for the unit or units in question and the denominator of which shall be

Exhibit M—(Continued)

the total cost of training operators for the entire Defense Plant Facilities. [81]

The symbols "E" and "F" shall have the meanings defined in Appendix "B" attached hereto.

In Witness Whereof, the parties hereto have executed this contract as of the day and year first above written.

DEFENSE SUPPLIES
CORPORATION

By /s/ H. A. MULLIGAN,
President.

Attest:

[Seal] /s/ GEORGE H. HUBERT,
Secretary.

WILSHIRE OIL COMPANY,
INC.,

By /s/ HEORGE L. MACHRIS,
President.

Attest:

[Seal] /s/ W. D. SMITH,
Asst. Secretary. [82]

EXHIBIT N

DEFENSE SUPPLIES - RICHFIELD
CONTRACT

(Watson Refinery—Second Contract)

Revised March 23, 1943

Contract made as of February 20, 1943, between Richfield Oil Corporation, a Delaware Corporation, having its principal business office at 555 South Flower Street, Los Angeles, California, hereinafter called Seller, and Defense Supplies Corporation, a corporation created by Reconstruction Finance Corporation, pursuant to Section 5 (d) of the Reconstruction Finance Corporation Act as amended, having its principal place of business at Washington, D. C., hereinafter called Buyer.

In consideration of the mutual agreements herein contained the parties agree as follows:

A certain contract made as of February 3, 1942, between the parties entitled "Contract between Defense Supplies Corporation and Richfield Oil Corporation" is hereby modified to the extent that it is inconsistent herewith and shall otherwise remain in full force and effect. Said certain contract will be referred to hereinafter as "the prior contract."

I. Expansion of Seller's Refining Facilities.

As of the date of the prior contract, Seller had existing facilities for the production at Watson, California, of approximately one thousand seven hundred (1,700) barrels per calendar day of 100

Exhibit N—(Continued)

octane aviation gasoline in accordance with Item 1 of Exhibit A hereof.

Seller has now recently completed an expansion of such facilities contemplated by the prior contract, to an extent which Seller originally estimated would enable it to produce approximately [83] three thousand and seven hundred fifty (3,750) barrels per calendar day of 100 octane aviation gasoline in accordance with Item 1 of Exhibit A hereof and which Seller currently estimates will enable it to produce approximately three thousand sixty-five (3,065) barrels per calendar day of 100 octane aviation gasoline in accordance with Item 3 of Exhibit A hereof.

Seller is willing to make an additional expansion of its facilities at an estimated cost of approximately Fourteen Million Three Hundred Seventy-five Thousand Dollars (\$14,375,000.00), which it is estimated will enable Seller to produce at Watson, California, a total of approximately ten thousand two hundred (10,200) barrels per calendar day of 100 octane aviation gasoline in accordance with Item 3 of Exhibit A hereof. Seller shall use its best efforts to expand said additional facilities and shall endeavor to maintain work on said expansion day and night in so far as the requisite labor and materials are available. Seller shall use its best efforts to complete such expansion as soon as possible and not later than March 1, 1944. The force majeure provisions set forth in Section X hereof shall apply in all respects to the expansion of facilities as well

Exhibit N—(Continued)

as to the sale of gasoline and all other obligations of Seller.

II. Sale and Storage of Products.

(a) When the aforesaid additional expansion of Seller's facilities shall be completed and ready for operation, Seller shall promptly notify Buyer; and from and after receipt of such notification Seller shall sell and deliver, and Buyer shall buy and receive, in accordance with provisions of this contract, two hundred twenty-five thousand (225,000) barrels per calendar month of 100 octane aviation gasoline which shall be in accordance with the specifications set forth in Exhibit A hereof or [84] any other specification which by mutual agreement shall be attached as an addendum to Exhibit A.

(b) Wherever in this contract provision is made for the sale and delivery to Buyer of a stated quantity of gasoline such quantity shall be an aggregate quantity of the various kinds of gasoline specified in Exhibit A collectively considered. Buyer may apportion such aggregate quantity among the various kinds of gasoline.

(c) Buyer on giving reasonable notice to Seller may require the delivery hereunder of 100 octane aviation gasoline of specifications other than those originally set forth in Exhibit A hereof which are capable of being produced with the same refining facilities and the same raw materials as are used in producing 100 octane aviation gasoline in accordance

Exhibit N—(Continued)

with the specifications originally set forth in Exhibit A hereof. The prices, specifications and quantities of such products shall be determined by negotiation between the parties, and Seller shall not be required to deliver such products unless and until an agreement has been reached. Such agreement shall be reduced to writing as an addendum to Exhibit A hereof.

(d) The term "barrel" as used in this contract means a barrel of forty-two (42) gallons. The term "gallon" means a United States gallon of two hundred and thirty-one (231) cubic inches.

(e) Seller shall maintain storage facilities at, or in the vicinity of, Watson, California, to accommodate at least three hundred thousand (300,000) barrels of 100 octane aviation gasoline. Subject to Section VIII hereof, Buyer shall order and take deliveries in such quantities as it may determine; provided, however, that whenever Seller's above-specified storage facilities for said aviation gasoline shall be filled, [85] Seller shall not be obligated to produce any more of said gasoline for delivery to Buyer hereunder until Buyer shall have substantially reduced by purchase and removal the amount of gasoline in storage. If such full storage condition exists, Seller shall have the right to diminish the quantities otherwise to be delivered to Buyer by an amount equal to the amount of 100 octane aviation gasoline which was produced during such full storage condition. If, however, Seller shall produce during any

Exhibit N—(Continued)

such period of full storage any additional 100 octane aviation gasoline of the kind covered by this contract, then such additional aviation gasoline shall be treated as covered by Section III hereof. In accumulating said storage, Seller may store gasoline of the specifications last ordered by Buyer unless Buyer otherwise directs by written notice; and Buyer in ordering deliveries shall first order against the gasoline in storage; provided, however, that on Buyer's request and if Seller can do so without extra cost, Seller shall change the gasoline in storage to meet other specifications covered in Exhibit A hereof.

III. Optional Gasoline.

(a) Buyer shall also have the option from time to time and at any time to purchase all or any part of the 100 Octane aviation gasoline which Seller may produce between the effective date of the notification referred to in Section II (a) hereof and the expiration of this contract. Upon the exercise of such option Seller shall, subject to Section V (c) hereof, operate the facilities at full capacity or at least to an extent sufficient to satisfy Buyer's indicated requirements.

IV. Price and Payment.

(a) Prior to the effective date of the notification referred to in Section II (a) hereof, the base price of 100 [86] octane aviation gasoline, specified as Item 2 of Exhibit A hereof, shall be thirteen and

Exhibit N—(Continued)

one-quarter cents (0.1325) per gallon f.o.b. Seller's refinery at Watson, California, but said base price shall not apply from and after the effective date of the notification referred to in Section II (a) hereof.

(b) From and after the effective date of the notification referred to in Section II (a) hereof, the base price of 100 octane aviation gasoline in accordance with Item 3 of Exhibit A hereof purchased under the present contract and under the prior contract shall be thirteen and one-half cents (0.135) per gallon f.o.b. Seller's refinery at Watson, California.

(c) Seller represents that there has not been included in its computation of such prices any allowance for appreciation, amortization and obsolescence in excess of ten percent (10%) per annum of that portion of the original cost of its existing refining facilities used in the manufacture of said 100 octane aviation gasoline which is properly allocable to such manufacture, plus ten percent (10%) per annum of that portion of the original estimated cost of its proposed additional refining facilities to be used in the manufacture of said 100 octane aviation gasoline which is properly allocable to such manufacture. Nothing in the preceding sentence shall preclude Seller from using a different rate or rates for tax and accounting purposes.

(d) Buyer shall pay promptly, but not later than the twentieth (20th) day after the end of each calendar month, [87] all money due for gasoline de-

Exhibit N—(Continued)

livered to it by Seller during said month. On or before the tenth (10th) day of each calendar month, Seller shall render to Buyer a statement setting forth the quantity of aviation gasoline delivered during the preceding month, the price per gallon, and the total amount to be paid therefor. Copies of the certificates of inspection referred to in Section IX hereof shall accompany the aforesaid monthly statements.

V. Price Escalation.

The base prices of 100 octane aviation gasoline purchased under the present contract and under the prior contract shall be subject to adjustment, first, as provided in Exhibit B hereof, and second, as follows:

(a) The said base prices are based on a price of One Dollar and Eleven Cents (\$1.11) per barrel for twenty-six degree (26°) A.P.I. Signal Hill crude deliverable to Seller in the Signal Hill Field. The said prices shall be increased or decreased by a percentage equal to one-half the percentage increase or decrease in the average price paid for such crude over or under One Dollar and Eleven Cents (\$1.11) per barrel by the three (3) largest purchasers of such crude in the Signal Hill Field. The prices posted for such crude in the Signal Hill Field should constitute prima facie evidence of the prices paid by such purchasers.

(b) The base price for 100 octane aviation gaso-

Exhibit N—(Continued)

line set forth in Section IV (a) hereof shall also be increased or decreased by a percentage equal to one-half the percentage increase or decrease in the final monthly wholesale price Index [88] Number for "All Commodities other than Farm Products and Foods," as now published by the Bureau of Labor Statistics. United States Department of Labor, over or under the index figure of ninety-three and five-tenths (93.5) (the final index number used in the prior contract). The effective date of a change in price due to a change in the index number shall be the date of publication by the Bureau of Labor Statistics of the latest final monthly index number. If said index shall cease to be issued, the parties shall use such other index as may most closely approximate the discontinued one, and if they shall be unable to agree within ten (10) days after notice of such discontinuance as to the index to be substituted, the determination of the new index shall be made by arbitration under Section XI hereof.

(c) The base price for 100 octane aviation gasoline set forth in Section IV (b) hereof shall also be increased or decreased by a percentage equal to one-half the percentage increase or decrease over or under a calculated index figure which is the weighted average of three thousand sixty-five (3,065) barrels per calendar day at ninety-three and five-tenths (93.5) and seven thousand one hundred thirty-five (7,135) barrels per calendar day at ninety-five and eight-tenths (95.8) (the present final index number). The effective date of a change in price due

Exhibit N—(Continued)

to a change in the index number shall be the date of publication by the Bureau of Labor Statistics of the latest final monthly index number.

(d) The prices hereinabove set forth are based upon present normal methods of transporting petroleum raw materials to Seller's refinery at Watson, California, and upon [89] a normal operation of that refinery, in which substantial quantities of motor fuel and other products must necessarily be produced and sold in connection with the production of 100 octane aviation gasoline. If it becomes necessary to transport petroleum raw materials to said refinery by other than present normal methods thereby incurring additional costs of transportation, or if through an abnormal reduction of available markets for motor fuel and petroleum products other than 100 octane aviation gasoline, or if by reason of any cause or condition (whether or not of the same class or kind) resulting directly or indirectly from the existence of a state of war, the normal functioning of any refinery at which any portion of the 100 octane aviation gasoline supplied hereunder is manufactured shall be interfered with to such an extent that in the opinion of Seller the cost of refining 100 octane aviation gasoline is increased in respects other than those corrected by adjustment of the base price under the above paragraphs (a), (b), and (c), Seller may give notice to Buyer that the delivery of 100 octane aviation gasoline will be reduced in an amount sufficient in the judgment of Seller to offset the added cost of refining unless Buyer shall agree

Exhibit N—(Continued)

with Seller to increase the price paid for 100 octane aviation gasoline by an amount sufficient to offset such increased cost. If within ten (10) days after the date of mailing such notice Buyer advises Seller that it does not elect to take such reduced output and Buyer and Seller are unable to agree upon the amount of such increase in price within ten (10) days thereafter, Buyer may give notice to Seller that it desires to have the amount of such increase fixed by arbitration in accordance with Section XI hereof. The arbitrators to be chosen in this instance shall be persons who have had at least [90] ten (10) years' experience in the petroleum business and who are not connected with either of the parties hereto. The arbitrators shall be directed to make their findings as to the amount and effective date of such price increase within fifteen (15) days after the appointment of the last-appointed arbitrator and if no decision is reached by the arbitrators within such period, the production of 100 octane aviation gasoline by the refinery affected may be reduced as above provided.

(e) In making adjustments under this Section V, the prices to be adjusted shall be those prices in effect immediately prior to the adjustment and such adjustment shall be made regardless of what Seller's crude inventory may be at the time of such adjustment.

VI. Duration of Contract.

The original term of this contract shall expire at

Exhibit N—(Continued)

midnight on the last day of the last thirty-six (36) consecutive calendar months after the effective date of the notification referred to in Section II (a) hereof, but not later, in any event, than June 30, 1947. Buyer shall have the option to extend this contract for two (2) successive yearly periods beyond the original term by giving notice in writing to Seller of the exercise of such option at least ninety (90) days prior to the end of the original term for the first yearly extension and at least ninety (90) days prior to the end of the first yearly extension for the second yearly extension. Upon such extension the obligations to purchase and receive and the prices to be paid shall be fixed by agreement between the parties hereto during the ninety (90) day period prior to each such extension. [91] All of the other provisions of this contract except those not then applicable shall be in full force and effect. Section VI of the prior contract is hereby superseded and cancelled, except for the first sentence thereof.

VII. Advance on Account of Purchase of Gasoline.

(a) In addition to the advance payment provided for in the prior contract, Buyer shall make an advance payment to Seller on account of the purchase of 100 octane aviation gasoline under this contract in the amount of Ten Million Seven Hundred Eighty-one Thousand Two Hundred Forty-four Dollars (\$10,781,244.00) which shall be disbursed in monthly installments as the construction of the ex-

Exhibit N—(Continued)

panded facilities progresses. The first installment shall be disbursed in the amount of one-twelfth (1/12th) of said Ten Million Seven Hundred Eighty-one Thousand Two Hundred Forty-four Dollars (\$10,781,244.00) immediately following the expiration of ninety (90) days from the date of this contract or immediately following receipt of notice by Buyer from Seller of Seller's waiver of its right to terminate this contract under Section XVII hereof, whichever event shall first occur. The remaining installments shall be disbursed when Seller shall deliver to Buyer statements, showing only principal items, to certify that it has expended, or firmly committed itself to expend, on account of the construction of the additional expansion of facilities referred to in Section I hereof all of the funds theretofore advanced to it by Buyer and in addition has so expended, or firmly committed itself to expend, from its own funds not less than thirty-three and one-third percent (33-1/3%) of the aggregate of such installments advanced by Buyer. Buyer shall have the privilege of examining Seller's books to verify said [92] statements, but such verification shall not be a condition of payments by Buyer. If such examination shall lead to any disagreement, it shall be settled by arbitration under Section XI hereof.

(b) From the amount due Seller for deliveries of 100 octane aviation gasoline for each of the first thirty-six (36) full calendar months following receipt by Buyer of Seller's notification of completion

Exhibit N—(Continued)

of the additional expansion of facilities referred to in Section I hereof, Buyer shall deduct and retain the sum of:

(1) one thirty-sixth ($1/36$ ths) of the above advance payment, and

(2) interest at the rate of two percent (2%) per annum on outstanding balances of such advance payment accruing subsequent to the date of receipt by Buyer of Seller's notification of completion of said additional expansion of facilities;

provided that Buyer shall also deduct and retain, with respect to each of the first twelve (12) full calendar months after the date of receipt of such notification of completion the sum of:

(1) one-twelfth ($1/12$ th) of the amount of interest at the rate of two percent (2%) per annum on the outstanding balances of such advance payment accrued prior to and including the date of receipt by Buyer of Seller's notification of completion of said additional expansion of facilities; and

(2) one-twelfth ($1/12$ th) of the account of the [93] credit, if any, referred to in paragraph (c) of this Section VII.

The above deductions, plus the deductions under the provisions of Section VII of the prior contract accruing subsequent to the effective date referred to in

Exhibit N—(Continued)

Section II (a) hereof, shall be considered as payment for the first purchases by Buyer in each of the first thirty-six (36) full calendar months following the effective date of the notification referred to in Section II (a) hereof.

(c) If, by reason of delay in the completion of the expanded facilities, the effective date of the notification referred to in Section II (a) hereof shall not be at least thirty-six (36) months prior to June 30, 1947, then Seller shall repay to Buyer one thirty-sixth ($1/36$ th) of the principal amount of the advance payment for each month or fraction thereof by which the effective date of said notification is subsequent to July 1, 1944, such repayment to be credited against any purchases by Buyer of 100 Octane aviation gasoline hereunder delivered during each of the twelve (12) full calendar months following the effective date of said notification; provided, however, that not more than one-twelfth ($1/12$ th) of such credit shall be taken in each of said twelve (12) full calendar months; and provided further that any such repayment not made as provided above or in paragraph (d) of this Section VII shall be made by Seller to Buyer in cash on expiration of the original term of this contract.

(d) In the event of Seller's failure to deliver sufficient 100 octane aviation gasoline hereunder following the effective date of the notification referred to in Section II (a) hereof, due to reasons other than the force majeure reasons [94] referred to in Section

Exhibit N—(Continued)

X hereof, to permit Buyer to recoup in any month the monthly repayment installment as provided in paragraph (b) of this Section VII, the unrecouped portion of the monthly repayment installment as aforesaid shall be repaid immediately by Seller to Buyer in cash; but if such failure was due to such force majeure reason then the repayment period provided in paragraphs (b) and (c) of this Section VII shall be extended one month for each month in which such failure due to such force majeure reason occurred.

VIII. Liquidated Damages and Limitation of Liability.

(a) The parties mutually agree that the Seller would be seriously damaged in the event that Buyer should breach its obligation to take that minimum quantity of 100 octane aviation gasoline herein agreed upon and that the liquidated damages herein provided for are not in the nature of a penalty or forfeiture and that they reflect allowance for the possible cessation of war prior to the expiration of the original term of the contract. If Buyer shall fail to purchase sufficient 100 octane aviation gasoline in any one full calendar month following the effective date of the notification referred to in Section II (a) hereof to liquidate the total of the monthly repayment installments under this contract and the prior contract (determined as provided in paragraphs (b) and (c) of Section VII hereof and in paragraphs (b) and (c) of Section VII of the

Exhibit N—(Continued)

prior contract), Buyer shall have the privilege to deduct and retain from amounts owing to Seller for purchases of 100 octane aviation gasoline during the next succeeding month, over and above amounts sufficient to liquidate the regular monthly repayment [95] installments for such month, an amount up to the unrecouped portion of the monthly repayment installments for the preceding month. If Buyer so fails to make recoupment, as aforesaid, during such succeeding month, then Seller shall, upon the expiration of such month, be entitled to retain as liquidated damages such unrecouped amount plus interest at the rate of two percent (2%) per annum on such unrecouped amount computed from the first (1st) day of the preceding month.

(b) The foregoing liquidated damages and the liquidated damages provided in Section VIII of the prior contract relate solely to a default by Buyer in not purchasing the stipulated quantities and there shall be no other damages for any failure by Buyer to take the quantities stipulated in Section II (a) of the prior contract and Section II (a) of the present contract. Damages for any other default by Buyer and for any default by Seller shall be determined by arbitration under Section XI hereof.

IX. Deliveries and Inspections.

(a) Seller warrants full and unencumbered title to all gasoline delivered under this contract. Title to said gasoline, and risk of loss in respect thereof, shall pass from Seller to Buyer upon delivery of the

Exhibit N—(Continued)

gasoline at the intake pipe of the means of transportation, f.o.b. Seller's refinery at Watson, California.

(b) Buyer shall take delivery of said gasoline in tankers, barges, tank cars, or tank trucks (tank truck deliveries to be not in excess of Seller's capacity for loading tank trucks and tank car deliveries not to be in excess of two thousand [96] (2,000) barrels in any one day) all to be supplied by Buyer at its own cost and expense.

(c) Buyer shall give notice to Seller as far in advance as practicable, and in no case less than forty-eight (48) hours, of the arrival of each tanker or barge and of the quantity of and specifications of the gasoline to be loaded. Seller shall furnish without cost to Buyer berth at which each vessel may safely lie afloat together with all connections and facilities for loading, and shall load the product on board. Deliveries shall be made in accordance with the delivery conditions at each loading point which currently are in effect with respect to deliveries made at such point to other customers.

(d) Seller shall furnish certificates of inspection, by a licensed inspector satisfactory to the parties which shall set forth the quantity and quality of each shipment of gasoline. Inspection shall be based on samples taken from Seller's storage tanks from which the product is delivered. The certificates of inspection shall be issued in five counterparts, one set of which shall accompany the relative shipment,

Exhibit N—(Continued)

one of which shall be forwarded forthwith to Buyer, a third submitted to Buyer with the monthly statement required by Section IV hereof, a fourth set of which shall be delivered forthwith to Seller, and a fifth set of which shall be delivered forthwith to the authorized officer or employee of the War Department or Navy Department referred to in paragraph (1) of this Section IX. Buyer may, at its option, waive the requirements of inspection by a licensed inspector, and in such event, and in case of shipments made from points (other than refineries) where no licensed inspector [97] is available, Seller shall furnish its own certificates of inspection, which certificate shall be controlling.

(e) Inspection as to quantity of delivery into vessels shall be made by taking the temperature and measuring and gauging the product in the shore tanks from which delivery is made immediately before and immediately after loading. Inspection as to quantity of delivery into tank cars and tank trucks shall be made in accordance with the accepted practices of the trade. Adjustment in volume to a sixty degree Fahrenheit (60°F.) basis shall be made in accordance with the correction tables of the United States Bureau of Standards prevailing at the time of delivery except in case of deliveries of quantities less than four thousand (4,000) gallons into tank wagons, in which case no adjustment shall be made.

(f) Inspection as to quality shall be made accord-

Exhibit N—(Continued)

ing to the latest standard or tentative standard methods of the American Society for Testing Materials, wherever applicable, and the product shall conform as to quality with the specifications set forth in Exhibit A hereof.

(g) The cost of product inspection shall be paid by Seller and billed separately to Buyer, which shall pay such cost, except when Seller's inspection is accepted in which case Seller shall assume the cost of its own inspection.

(h) The certificates of inspection of quantity and quality shall be accepted by Buyer and Seller as conclusive for invoice, payment, and all other purposes of this contract.

(i) Should any such certificate indicate a failure of the product shipped to conform completely to the specifications of quality, Buyer may nevertheless accept such product and claim an adjustment for such deficiency; provided, that in [98] the event that such a claim is made Seller shall be notified and given an opportunity to inspect said shipment within five (5) days after arrival at destination but in any event before unloading.

(j) Upon request by Buyer, Seller shall make deliveries of 100 octane aviation gasoline under this contract in appropriate limited quantities to points where Seller may be currently engaged in making deliveries of aviation gasoline in the ordinary course of its business. The delivery costs shall be paid by Buyer and are to be mutually agreed upon.

Exhibit N—(Continued)

(k) Seller shall not be obligated to procure the 100 octane gasoline to be delivered hereunder from any source other than its Watson, California, refinery.

(1) Until further notice from Buyer to Seller, for the purposes of this Section IX any officer or employee of the War Department or Navy Department who is properly authorized to accept deliveries of gasoline for his Department is hereby nominated as agent for Buyer and authorized to take delivery of aviation gasoline hereunder, to waive the aforesaid requirements of inspection by a licensed inspector, and to receipt on behalf of Buyer, in a manner approved by Buyer, for deliveries of such aviation gasoline from Seller to Buyer.

X. Force Majeure.

Seller shall not be liable for delays or defaults in its performance under this contract due to causes beyond its control and without its fault or negligence, including, but not restricted to, acts or requests of the Government, or of any Governmental officer or agent purporting to act under authority, floods, fires, epidemics, quarantine restrictions, strikes, freight embargoes and failures, exhaustion or unavailability, or [99] delays in delivery, of any product, service or material necessary in the expansion of the facilities contemplated by Section I hereof, or in the manufacture and delivery of aviation gasoline deliverable hereunder, including crude oil,

Exhibit N—(Continued)

supplies, raw materials, ingredients and lead tetra-ethyl.

XI. Arbitration.

In case of any disagreement between Buyer and Seller as to any right, obligation, term, or provisions of this contract, including any disagreement as to the price to be paid for gasoline to be delivered hereunder, the parties shall make an earnest effort to settle such disagreement to their mutual satisfaction. If such effort be unsuccessful, then either party may cause such disagreement to be submitted for determination by arbitrators by giving to the other party a notice in writing or by telegraph to that effect and giving the name of the arbitrator chosen by the party giving the notice. Within five (5) days after receipt of such notice of arbitration, the other shall, in writing or by telegraph, name the arbitrator chosen by such party, and within five (5) days after the appointment of the second arbitrator, an additional arbitrator shall be selected by the two (2) arbitrators theretofore appointed, provided, however, if one of the parties shall have failed to appoint an arbitrator as hereinbefore provided, the sole arbitrator shall arbitrate the disagreement alone. If two (2) arbitrators shall have been appointed as aforesaid and shall have failed to select an additional arbitrator within the above stated time, the additional arbitrator shall be appointed by the person who at the time is the Senior Judge of the United States Circuit Court of Appeals for the

Exhibit N—(Continued)

Ninth Circuit, acting in his individual and not judicial capacity, upon application therefore by either of the parties. The decision of [100] a majority of the arbitrators so appointed, or if either party shall have failed to appoint an arbitrator as aforesaid, the decision of the sole arbitrator shall be final and binding on the parties for all purposes. Each party shall pay the cost and expenses of the arbitrator appointed by such party, and the other costs and expenses of the arbitration, including the cost and expenses of the additional arbitrator, shall be paid by the party to the arbitration whose claim is not sustained or if partially sustained the costs shall be apportioned. Pending such determination of every disagreement as to the price to be paid for gasoline delivered hereunder, Buyer shall, upon contesting any price claimed by Seller to be due, pay the price which Buyer alleges to be due and shall immediately upon such determination pay any balance found by mutual agreement or by said arbitrators to be due.

XII. Taxes.

(a) Buyer shall pay in addition to the prices as established in Sections IV and V hereof, any new or additional taxes, fees, or charges, other than income, excess profits, or corporate franchise taxes, which Seller may be required by any municipal, state, or federal law in the United States or any foreign country to collect or pay by reason of the production, manufacture, sale or delivery of the commodities delivered hereunder. Buyer shall also

Exhibit N—(Continued)

pay any such taxes on crude petroleum, or the transportation thereof, to the extent such taxes result in increased cost of the commodities delivered hereunder not compensated for by Section V hereof.

(b) Buyer shall also pay in addition to the prices as established in Section IV and V hereof, any now existing taxes, [101] fees, or charges measured by the volume or sales price of the aviation gasoline delivered hereunder, imposed upon Seller by reason of the production, manufacture, storage, sale or delivery of such gasoline, unless Buyer or Seller is entitled to exemption from a given tax, fee or charge by virtue of Buyer's governmental status; it being understood that Buyer now believes that both Buyer and Seller are entitled to such exemption. Seller represents that the taxes, fees and charges referred to in this paragraph have not been included in its computation of costs on which the prices set forth in Section IV hereof are based.

(c) If in any case the parties cannot agree on the question as to whether or not Buyer or Seller is entitled to exemption from a given tax, fee or charge by virtue of Buyer's governmental status, the burden shall be upon Buyer to obtain a ruling in writing from a duly constituted and authorized governmental tax authority as to such exemption. Until such ruling is obtained Buyer shall pay the amount of the tax to Seller or to the appropriate tax collecting agency or make satisfactory arrangements with such tax collecting agency.

Exhibit N—(Continued)

(d) Any addition of taxes to the prices as established in Sections IV and V hereof shall not be considered in arriving at the value of the gasoline delivered hereunder in connection with those portions of the contract referring to liquidated damages, repayment of advance or recoupment of advance, and such taxes shall be shown separately and be in addition to the price.

XIII. Notices.

Any notice to be given hereunder shall be in writing [102] and may be personally delivered or sent by cable, telegram or registered mail to the party for whom intended at the address of such party as specified above. A notice personally delivered to either party must be personally delivered to an officer or manager thereof. Notice by registered mail shall be deemed to have been given at the expiration of that time after mailing which is normally required by the postal authorities to make delivery. Cabled or telegraphed notice shall be deemed given the day after sending the cable or telegram. Each party shall immediately send to the other by regular mail confirming copies of any notices sent by cable, telegraph or air mail. Either party may by notice as aforesaid change its address for notices thereafter.

XIV. Entirety of Contract.

This instrument contains the entire agreement between the parties in respect of the subject matter

Exhibit N—(Continued)

and there are no conditions, warranties, representations or stipulations relating thereto which are not merged herein. The right of either party to require strict performance shall not be affected by any previous waiver or course of dealing, unless such waiver be in writing signed by an officer or other duly authorized person and specify a duration sufficient in time to embrace the matter in question. No modification shall be binding unless in writing and signed by officers of the parties. Authorization or ratification by the boards of directors of the parties shall not be required in respect of modifications.

XV. Assignability.

This contract shall be binding upon, and shall inure to the benefit of, the successors and assigns of the respective [103] parties hereto; provided, however, neither party shall have the right to assign this contract without the written consent of the other party, except that Buyer may assign to any other government-owned corporation in which event Buyer shall remain liable.

XVI. Statutory Compliance.

(a) In carrying out this contract Seller agrees to comply with, and give all stipulations and representations required by applicable Federal laws and further agrees to require such compliances, representations, and stipulations with respect to any contract entered into by it with others incidental to or in connection with this contract as may be required

Exhibit N—(Continued)

by applicable Federal laws; and notwithstanding the generality of the foregoing, Seller further agrees that in the performance of this contract it will not discriminate against any worker because of race, creed, color or national origin.

(b) Seller is a corporation and this contract is made with it for its general benefit and no Member of, or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom in violation of the law of the United States covering such matters.

XVII. Right to Terminate.

Seller shall have the right to terminate this contract within ninety (90) days of the date thereof, unless within said ninety (90) days it shall receive all governmental assistance which is available or necessary for the prompt completion of the expanded facilities which Seller will erect and install hereunder, including, without limitation, priorities and allocations necessary [104] for obtaining materials, equipment, supplies and crude petroleum, and assurances from the Treasury Department, in the form of closing agreements, that the advance payment provided for in Section VII hereof, or any part thereof, will not be treated as taxable income upon receipt by Seller, but that the ratable portions thereof will be treated as amounts received for products supplied, when and as such ratable portions are credited for that purpose hereunder. Failure so to

Exhibit N—(Continued)

terminate shall not constitute a waiver of any other rights of Seller,

In Witness Whereof, the parties hereto have executed this contract as of the date and year first above written.

DEFENSE SUPPLIES
CORPORATION,

By /s/ H. A. MULLIGAN,
President.

Attest:

/s/ H. H. TURNER,
Secretary.

RICHFIELD OIL COR-
PORATION,

[Seal] /s/ CHAS. S. JONES,
President.

Attest:

[Seal] /s/ C. B. BONNER,
Secretary. [105]

EXHIBIT O

Rubber Reserve Company
Washington, D. C.

Gentlemen :

Rubber Reserve Company now has, and expects from time to time to have, on hand at its various styrene plants quantities of ethylbenzene, in excess of its own requirements, which it is willing to make available to your Company and others engaged in producing 100-octane gasoline for sale to Defense Supplies Corporation.

Accordingly, at the request of the Petroleum Administrator for War, and until further written notice, Rubber Reserve Company (hereinafter called "Seller") hereby proposes to sell to your Company (hereinafter called "Buyer") such quantities of ethylbenzene as Buyer may request in the following manner, and subject to the following terms and conditions:

1. The purchase price of all ethylbenzene sold and delivered to Buyer hereunder shall be 96c per gallon, f.o.b. Seller's producing plant, the payment of such price to be discharged in the manner provided by paragraph 7 hereof.

2. All ethylbenzene sold hereunder shall be of a grade and quality suitable for use as a substitute for cumene in the production of 100-octane gasoline for sale to Defense Supplies Corporation.

3. Seller shall be the sole judge of the quantity, if any, of ethylbenzene in excess of its own require-

ments which shall be available from time to time for sale hereunder, and shall have the right to apportion the available quantity, in any manner it chooses, among any or all of the companies referred to in the first paragraph hereof.

4. Buyer shall issue and forward to the Administration Division, Rubber Reserve Company, Washington 25, D. C., purchase orders in triplicate covering the quantity of ethylbenzene which it desires to purchase from time to time. Said purchase orders shall incorporate by reference the provisions of this letter which shall supersede any conflicting provisions contained in said purchase orders, and such purchase order shall constitute a separate agreement for the purchase and sale of the quantity of ethylbenzene indicated therein.

5. Title to all ethylbenzene sold hereunder shall pass to Buyer upon delivery to the custody of the carrier designated in Buyer's purchase order. Buyer shall issue appropriate shipping [106] instructions to Seller, but it is understood that it shall be the responsibility of Buyer to furnish all tank cars, truck tanks, tankers, barges or other containers necessary for shipments hereunder.

6. All shipments shall be corrected to volume at 60°F., with a temperature correction factor of .0005 per degree Fahrenheit. Barge and tanker shipments shall be measured by commercial inspectors engaged by Seller at Buyer's expense unless such inspection is expressly waived by the Buyer, in which case Seller's measurement shall control. Rail or truck

shipments shall be measured on the basis of volume in cars or trucks.

7. In full consideration for the sale and delivery of all ethlybenzene purchased hereunder, the obligations of Buyer shall be as follows:

(a) Buyer shall make payment to Seller of the amount of 17c per gallon within thirty (30) days after the date of shipment;

(b) Buyer shall file with Defense Supplies Corporation appropriate claims for reimbursement with respect to all aviation gasoline produced by Buyer containing ethlybenzene sold and delivered to Buyer hereunder, each such claim to reflect the delivered cost of such ethlybenzene based upon the price specified herein of 96c per gallon, f.o.b. the producing plant, and each such claim to be accompanied by an appropriate notation identifying the portion thereof reflecting such ethylbenzene cost with an appropriate sub-division reflecting separately and identifying the amount which is the subject of the assignment required by subparagraph (c) hereof; it being understood that such claim will be so submitted to Defense Supplies Corporation in pursuance of the provisions of the existing contract between Buyer and Defense Supplies Corporation covering the purchase of aviation gasoline;

(c) Buyer, by the submission of the related purchase order as hereinabove provided, shall be deemed to have assigned and agreed to assign to Seller, but only to the extent of that portion represented by the difference between 96c and 17c per

gallon of ethylbenzene covered thereby, any and all claims filed or required to be filed by Buyer under the [107] provisions of subparagraph (b) hereof, with the right in Seller to reassign such claims to Defense Supplies Corporation or to any other Agency of the U. S. Government; and for the foregoing purposes, Buyer likewise shall be deemed to have authorized and directed Defense Supplies Corporation to remit to Seller, or to its assignee, but only to the extent aforesaid, the amounts of any and all such claims; and

(d) In the event that the net amount of any claim filed by Buyer under the provisions of subparagraph (b) hereof is less than the amount obtained by multiplying by 79c the number of gallons of ethylbenzene covered by such claim, Buyer shall, at the time such claim is so filed, forthwith remit to Seller the amount of such difference. In the further event that the net amount of any such claim is allowed by Defense Supplies Corporation (upon the advice of the Petroleum Administrator for War) is less than the amount obtained by multiplying by 79c the number of gallons of ethylbenzene covered by such claim, then Buyer shall, at the time such claim is allowed, remit to Seller the amount of such difference less any amount previously remitted to Seller with respect to such claim pursuant to the first sentence of this subparagraph (d); provided, however, that to the extent such latter difference is attributable to a reduction by Defense Supplies Corporation (upon the advice of the Petroleum Administrator for War in the allowance for the price of ethylbenzene as

reflected in such claim as so filed, Buyer shall be relieved of the obligation to make such latter remittance;

it being understood that upon performance by Buyer of all of the obligations set forth in the foregoing subparagraphs (a), (b), (c), and (d), Buyer shall have no further obligation with respect to any ethylbenzene sold and delivered to Buyer hereunder.

8. Buyer warrants that all ethylbenzene purchased hereunder shall be used by Buyer solely in the production of 100-octane gasoline, or components thereof, for sale to Defense Supplies Corporation, or its nominee, except as otherwise authorized by Defense Supplies Corporation.

9. It is understood that, since no tax is included in the purchase price, Buyer will reimburse Seller for all taxes which Seller may be required to pay in connection with any sale hereunder.

10. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this arrangement, or to any benefit arising therefrom, but this provision shall not be construed to extend to this [108] arrangement if made with a corporation for its general benefit. Buyer shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin.

To facilitate an orderly scheduling of the production of the ethylbenzene to be sold hereunder, it is requested that purchase orders be forwarded as soon

in advance of the desired shipping date as possible. Every effort will be made to fill orders from plants situated nearest to destination, but no representation is made that any order shall be so filled.

It is intended that the foregoing proposal shall supersede the one relating to the same subject which was set forth in Rubber Reserve Company's letter of June 22, 1944.

Very truly yours,

RUBBER RESERVE COMPANY,

By

Its..... [109]

EXHIBIT P

AGREEMENT

Whereas, at the request of War Department, Navy Department, and Petroleum Administration for War (hereinafter called Army, Navy, and PAW, respectively), Defense Supplies Corporation (hereinafter called DSC) has entered into contracts under which it has agreed to purchase from various refiners quantities of aviation gasoline commonly referred to as "100 octane aviation gasoline" (hereinafter called gasoline, except as otherwise specifically indicated), and has or will have options to cause certain additional gasoline to be manufactured and sold to it, the grades and specifications of said gasoline to be approved from time to time by the Aeronautical Board and administered by PAW; and

Whereas, it is contemplated that DSC, pursuant to recommendation by PAW, will enter into additional contracts for the purchase of gasoline to the end that substantially the entire available production thereof will be under contract to DSC; and

Whereas, the parties intend that supplies of gasoline shall be made available only to Army, Navy (acting for itself and for Lend-Lease Administration), and certain other approved purchasers pursuant to allocation by the Aviation Petroleum Products Allocations Committee (an existing committee, hereinafter called APPAC, comprising representatives of Army, Navy, PAW, and the British Government); and

Whereas, the parties hereto did on December 19, 1942, execute an agreement establishing a procedure under which gasoline was to be purchased by DSC and to be sold to Army and Navy and other approved purchasers, said agreement being effective from January 1, 1943, through June 30, 1943; and

Whereas, it is deemed necessary, for the effective prosecution of the war, to continue that procedure, with certain modifications, for a further period; and

Whereas, the parties desire that any money balances due Army and Navy in accordance with the aforesaid agreement of December 19, 1942, as of the date of its expiration be applied to the purchase by Army and Navy of gasoline under this agreement;

Now Therefore, It is agreed by Army, Navy, PAW, and DSC, as follows:

1. Any money balances due Army and Navy from DSC as of June 30, 1943, in accordance with paragraph 1 of the agreement of December 19, 1942, referred to above shall be retained by DSC as advances against the purchase price to Army and Navy, respectively, of gasoline to be sold and delivered to them by DSC during the period July 1, 1943, through June 30, 1944, hereunder. Adjustments in the amount of such advances may be made during the effective period of this agreement with the mutual approval of (1) DSC and the Contracting Officer, Materiel Command, Army Air Forces, Wright Field, Dayton, Ohio, in the case of Army; or (2) DSC and the Paymaster General, Navy Department, Washington, D. C., in the case of Navy. Upon expiration or termination of this agreement any unliquidated balances of such advances from Army and Navy shall be applied respectively against any payments then due DSC from Army and Navy for the sale and delivery to them by DSC of gasoline hereunder and the remaining balances, if any, shall be repaid by DSC to Army and/or Navy as the case may be.

2. DSC appoints Army and Navy, or either of them, through their proper officers or employees, its agents to accept for its account deliveries of all gasoline, to receipt on behalf of DSC for the same, and to redeliver all or part thereof in accordance with the provisions of this agreement. As used herein, "proper officers or employees" are defined as any officer or employee of Army or Navy who is properly authorized to accept deliveries of gasoline for his Department. [111]

3. Purchase of gasoline from DSC will be subject, as to quantity and end user, to determinations and allocations of APPAC and, as to refinery source, to release by PAW. Army and Navy may purchase and accept delivery of gasoline from DSC at such refineries in quantities no greater than those allocated by APPAC. Army and Navy reserve the right to purchase gasoline from DSC for delivery to purchasers or consumers other than Army and Navy.

4. When, from time to time, Army or Navy wishes to provide for delivery of all or part of the gasoline allocated to it, at points other than the refinery of manufacture, such gasoline shall be resold by DSC to any refiner or distributor designated by Army or Navy for distribution and sale to them at the required destination. Sales by DSC to such refiners or distributors shall be made at the prices established in accordance with paragraph 11 of this agreement, and, except for refiners having contracts with DSC for the purchase and sale of gasoline manufactured by them, shall be for cash at the option of DSC.

5. Where gasoline has been allocated by APPAC for delivery to consumers other than those named in this agreement, any refiner having a contract with DSC for the purchase and sale of gasoline may purchase from DSC, at the prices established in accordance with paragraph 11 of this agreement, the gasoline so allocated, for delivery to such other consumers or to their designated suppliers.

6. Deliveries to Army, Navy, refiners or distributors made in accordance with paragraphs 3, 4 and 5

above shall take effect immediately after acceptance of delivery for the account of DSC in accordance with paragraph 2 above. Receipts in the form attached hereto as Exhibit A (or any approved revision thereof) shall be issued indicating delivery to and redelivery from DSC. [112]

7. Delivery of gasoline and passage of title from DSC to Army or Navy at the refinery will be considered as having been made when gasoline passes through the intake pipe of a vessel, when a loaded tank car is turned over to a railroad company, or when loading of a truck is completed, as the case may be. Title to gasoline being resold to refiners or distributors in accordance with paragraphs 4 and 5 above will pass to them on the issuance in their behalf to DSC of the receipts provided for in paragraph 6 above.

8. Army and Navy assume responsibility for scheduling deliveries of all gasoline purchased by them from DSC. All arrangements for transportation and for the furnishing of transportation facilities will be made by Army, Navy, refiners or distributors for the gasoline redelivered to each in accordance with paragraphs 3, 4 and 5 above. DSC will not be liable for the payment of any transportation charges for moving gasoline. Such charges will be borne by Army and Navy or by customers purchasing gasoline from them or from refiners or distributors since all deliveries to and by DSC will be made at the refineries as provided in paragraph 7 hereof. Army and Navy are hereby authorized by

DSC to take advantage of provisions of contracts between DSC and refiners for utilization of refiners' delivery facilities and services.

9. For all gasoline purchased by them from DSC, Army or Navy, as the case may be, will give all notices of delivery required of DSC by the various contracts.

10. DSC, Army and Navy agree that the Certificates of Inspection of quantity and quality of each shipment to Army and Navy issued by a licensed inspector satisfactory to DSC shall be acceptable for invoicing and payment. The Certificate of Inspection and the Receipt (Exhibit A) will be prepared in five counterparts and distributed as follows: [113]

One set will accompany the shipment.

One set will be forwarded to DSC.

One set will accompany a monthly statement mailed to DSC showing all gasoline delivered during the preceding month.

One set will be delivered to the seller.

One set will be delivered to the Air Service Command, Army Air Forces, Attention Fuels and Lubricants Branch, Patterson Field, Fairfield, Ohio, or to the Fuel Division, Bureau of Supplies and Accounts, Navy Department, Washington, D. C., as the case may be.

DSC will waive the requirement that a licensed inspector inspect the gasoline and issue a Certificate of Inspection provided that an authorized inspector

or other authorized employee of Army or Navy accepts delivery and provided further that, upon acceptance of the gasoline under these circumstances, the authorized inspector or authorized employee issues a signed statement to DSC with respect to each shipment so accepted indicating that the requirement for the inspection and Certificate of Inspection by a licensed inspector has been waived by him. The receipt attached as Exhibit A will be acceptable for this purpose.

11. The prices per gallon to be charged by DSC for gasoline sold by it (whether to Army or to Navy, or to others) shall be determined as follows:

(a) For purposes of price determination under this agreement and renewals thereof the year shall be divided into quarters commencing the first day of January, April, July and October.

(b) For the quarter beginning July 1, 1943, prices for gasoline of the several grades sold shall be established by PAW not less than thirty days before the beginning of the quarter, based upon estimates sufficient to reimburse DSC for the cost of the gasoline, out-of-pocket expenses attributable to the gasoline program (including cost of inspection, maintenance of field auditors, etc.), extraordinary expenses as set forth in paragraph 13, and costs of DSC in administering the gasoline program not to exceed 1/200 of one cent per gallon. [114]

(c) For each succeeding quarter, prices for gasoline of the several grades sold shall be established not less than 30 days before the beginning of such

quarter in accordance with subparagraph (b) above, except that in addition to the factors mentioned in subparagraph (b), adjustments shall be made to compensate for differences, if any, found to exist between the actual costs for any preceding quarter (including quarters for which the aforesaid agreement of December 19, 1942, was in effect) and the estimates for that quarter.

(d) The prices established as aforesaid for each quarter shall be final, and not subject to further adjustment, and shall apply to all gasoline sold by DSC during such quarter.

(e) At the request of Army or Navy, but not more frequently than once during each quarter, DSC shall examine the expenses it has incurred in administering the gasoline program (estimating overhead and other indeterminables) and shall make such adjustment in its charge of $1/200$ of one cent per gallon as will approximate actual expenses and as may be agreed upon between the parties hereto.

12. Gasoline sold by DSC to refiners or distributors for delivery to Army, Navy and other customers in accordance with paragraphs 4 and 5 hereof shall be resold by the refiners or distributors at a price not to exceed the price paid by them to DSC, plus such delivery and service charges and applicable taxes (if any) as are agreed upon by the refiners or distributors and Army, Navy or such other customers.

13. Pending negotiation of contracts between the refiners and DSC to provide for the delivery of gaso-

line of specifications other than those set forth in existing contracts, it is agreed that extraordinary expenses incurred by the refiners pursuant to authorization of PAW will be interpreted to include additional costs, [115] if any, incurred by refiners resulting from any change in specifications of gasoline authorized by PAW. DSC will pay refiners for all extraordinary expenses approved by PAW, including those resulting from a change in specifications authorized by PAW, in accordance with the "Memorandum of Understanding on Plan to Reimburse Manufacturers of 91 Octane and Higher Aviation Gasoline for Losses Incurred in Following Office of Petroleum Coordinator Recommendations" dated July 24, 1942, copy of which is attached as Exhibit B, or any amendment or revision thereof as may from time to time be effective upon the agreement of the parties hereto. DSC shall submit reports to Army and Navy showing actual amounts of extraordinary expenses as approved by PAW and paid by DSC.

14. Payments to refiners by DSC, exclusive of reimbursement for extraordinary expenses, will be made at the time specified in, and in accordance with, the terms of the several contracts between DSC and the refiners.

15. Deliveries of all gasoline hereunder shall be made only in accordance with allocations of APPAC, notice of which shall be communicated to the parties concerned by PAW. Any applications received by DSC from commercial customers for gasoline shall

be referred to PAW for transmittal to and consideration by APPAC.

16. Penalties, if any, which may be imposed upon DSC for failure to accept deliveries of gasoline under the several contracts between it and the refiners shall be repaid to DSC by Army or Navy if the penalties are the proximate result of omission or failure of Army or Navy, as the case may be.

17. DSC may at the request of Army, Navy, and PAW enter into contracts for the purchase of "87 octane aviation gasoline" and "91 octane aviation gasoline". If and when such contracts are entered into, the parties hereto may, by a supplemental agreement, extend the procedure hereinabove established to apply to such "87 octane aviation gasoline" and "91 octane aviation [116] gasoline" as may be purchased by DSC pursuant to such contracts.

18. This agreement shall be effective during the period from July 1, 1943, to June 30, 1944 (both inclusive) unless otherwise sooner terminated by mutual agreement of the parties hereto, and shall upon becoming effective wholly supersede the aforesaid agreement dated December 19, 1942.

Executed as of May 20, 1943.

DEFENSE SUPPLIES
CORPORATION,

/s/ H. A. MULLIGAN,
President.

PETROLEUM ADMINISTRATION FOR WAR,

/s/ R. K. DAVIES,
Deputy Administrator.

WAR DEPARTMENT,

/s/ ROBERT P. PATTERSON,
Under Secretary of War.

NAVY DEPARTMENT,

/s/ JAMES FORRESTAL,
Under Secretary of the Navy.

EXHIBIT Q

AGREEMENT

Whereas, at the request of the War Department, Navy Department, and the Petroleum Administration for War, Defense Supplies Corporation has entered into contracts under which it has agreed to purchase from various refiners quantities of aviation gasoline commonly referred to as "100 octane aviation gasoline" (hereinafter referred to as "gasoline" except as otherwise specifically indicated), the specifications of said gasoline to be determined from time to time by the Aeronautical Board; and

Whereas, it is contemplated that Defense Supplies Corporation, pursuant to recommendation by the Petroleum Administration for War, will enter into additional contracts for the purchase of this product to the end that substantially the entire pro-

duction will be under contract to the Corporation; and

Whereas, such supplies of gasoline are to be made available only to the War Department, Navy Department (acting for itself and for Lend-Lease Administration), and certain other consumers pursuant to allocation by the "Allocations Committee" as hereinafter defined; and

Whereas, it appears desirable to establish a procedure under which such supplies will be received by Defense Supplies Corporation and made available to the War Department, Navy Department, and the other consumers;

Now Therefore, It is agreed by the War Department, Navy Department, Petroleum Administration for War, and Defense Supplies Corporation, as follows:

1. The War Department will advance to Defense Supplies Corporation \$34,000,000 and the Navy Department will advance to Defense Supplies Corporation \$66,000,000, which funds are estimated to be equivalent to 50% of the cost, including extraordinary expenses, of gasoline to be delivered to those Departments during the six-month period from January 1, 1943, through June 30, 1943. Adjustments in the amount of such advanced funds may be made during the effective period of this agreement with the mutual approval of (1) Defense Supplies Corporation and the Contracting Officer, Army Air Forces, Materiel Center, Wright Field, Dayton, Ohio,

in the case of the War Department; or (2) Defense Supplies Corporation and the Paymaster General, in the case of the Navy Department. Upon expiration of termination of this agreement, the unliquidated balance of advance payments shall be deducted from any payments otherwise due the Corporation hereunder, and the remaining balance, if any, shall be repaid to the War Department and/or Navy Department, as the case may be.

2. The War Department and Navy Department will purchase and take delivery of gasoline from Defense Supplies Corporation at such refineries and in such proportions as shall be determined by the Aviation Petroleum Products Allocations Committee. Said [118] Committee (herein referred to as "Allocation Committee") is an existing committee comprising representatives of the War Department, Navy Department, Petroleum Administration for War and the British Government. The War Department and Navy Department reserve the right to purchase gasoline from Defense Supplies Corporation for delivery to purchasers or consumers other than such Departments.

3. The War Department and Navy Department as agents for Defense Supplies Corporation will accept deliveries of all gasoline for the account of Defense Supplies Corporation from the various refiners at their respective refineries, and any officer or employee of the War Department or Navy Department who is properly authorized to accept deliveries of gasoline for his department is authorized

to receipt on behalf of Defense Supplies Corporation for deliveries of gasoline from refiners to Defense Supplies Corporation. Immediately thereafter the War Department and Navy Department will accept for their own accounts deliveries of gasoline from Defense Supplies Corporation. Likewise refiners will accept gasoline for their accounts immediately after delivery is accepted for Defense Supplies Corporation by its agents. In accepting deliveries from refiners receipts will be issued to the refiners on behalf of Defense Supplies Corporation and simultaneously to Defense Supplies Corporation on behalf of the War Department, Navy Department or refiner as the case may be. The receipt will be substantially in the form attached as Exhibit A.

4. Delivery of gasoline and passage of title from Defense Supplies Corporation to the War Department or Navy Department, as the case may be, will be considered as having been made at the refinery when gasoline passes through the intake pipe of a vessel, a loaded tank car is turned over to the railroad company or when loading of a truck is completed, as the case may be. Title to gasoline being resold to the refiners will not pass to the War Department or Navy Department.

5. In addition to the amount of gasoline which Defense Supplies Corporation is or will be obligated to purchase from the various refiners under its contracts, it has or will have the option to cause certain additional gasoline to be manufactured and sold to it. The quantity of this additional gasoline, spe-

cifications, and conditions under which it may be purchased are not uniform in all contracts. Defense Supplies Corporation will not exercise its option to purchase additional gasoline under any contracts until or unless requested to do so by the Allocations Committee.

6. The War Department and Navy Department assume responsibility for scheduling deliveries of all gasoline under contract by Defense Supplies Corporation from each refinery except that quantity repurchased by the refiners. All arrangements for transportation and for the furnishing of transportation facilities will be made by the War Department, Navy Department or the refiners for the gasoline allotted to each by the Allocations Committee. The War Department and Navy Department are hereby authorized by Defense Supplies Corporation to take advantage of provisions of contracts between Defense Supplies Corporation and refiners for utilization of refiners' [119] delivery facilities and services. Defense Supplies Corporation will not be liable for the payment of any transportation charges for moving gasoline. Such charges will be borne by the War Department or Navy Department or by customers purchasing gasoline from those Departments or from the refiners since all deliveries by Defense Supplies Corporation will be made at the refineries as provided in paragraph 4 hereof.

7. The War Department or Navy Department, as the case may be, will give all notices of deliveries required by the various contracts after proper allocation of gasoline by the Allocations Committee.

8. Defense Supplies Corporation, War Department and Navy Department agree that the Certificates of Inspection of quantity and quality of each shipment to the War Department and Navy Department, issued by a licensed inspector satisfactory to Defense Supplies Corporation, shall be acceptable for invoicing and payment. The Certificate of Inspection and the Receipt (Exhibit A) will be prepared in five counterparts and distributed as follows:

On set will accompany the shipment.

One set will be forwarded to Defense Supplies Corporation.

One set will accompany a monthly statement mailed to Defense Supplies Corporation showing all gasoline delivered during the preceding month.

One set will be delivered to the Seller.

One set will be delivered to the Air Service Command, Attention Fuels and Lubricants Branch, Patterson Field, Fairfield, Ohio, or to the Navy Department, as the case may be.

Defense Supplies Corporation will waive the requirement that a licensed inspector inspect the gasoline and issue a Certificate of Inspection provided that an authorized inspector or other authorized employee of the War Department or Navy Department accepts delivery and provided further that upon acceptance of the gasoline under these circumstances the authorized inspector or authorized employee issues a signed statement to Defense Supplies Corporation with respect to each shipment so accepted

indicating that the requirement for the inspection and Certificate of Inspection by a licensed inspector has been waived by him. The receipt attached as Exhibit A will be acceptable for this purpose.

9. (a) The price which Defense Supplies Corporation shall charge the War Department, the Navy Department and refiners for gasoline will be the average price per gallon for all gasoline purchased by Defense Supplies Corporation during the month, including all out-of-pocket expenses attributable to the gasoline program such as cost of inspection, maintenance of field auditors, etc., which Defense Supplies Corporation has incurred during the preceding month, as well as extraordinary expenses as set forth in paragraph 10, plus an additional $1/200$ of one cent per gallon to cover costs to Defense Supplies Corporation [120] in administering the gasoline program. Defense Supplies Corporation invoices will contain or be accompanied by a statement showing the computation by which the price per gallon was determined and by a signed counterpart of the Receipt and Certificate of Inspection, if any.

(b) Each month Defense Supplies Corporation will bill War Department, Navy Department and the refiners, respectively, for all the gasoline purchased by them during the preceding month at a price estimated by Petroleum Administration for War to cover the elements set forth in Paragraph 9 (a) hereof. The War Department and Navy Department will pay to Defense Supplies Corporation

the amounts so billed to them. In the event such estimated price is later determined to be less than or in excess of the actual price determined as provided for in paragraph 9 (a) above, an appropriate adjustment of the excess or deficiency will be made between the purchaser and Defense Supplies Corporation. Similarly gasoline will be resold by the refiners to customers other than the War Department and Navy Department at the same price they are charged by Defense Supplies Corporation, plus fair delivery and service charges and taxes applicable to the transaction, with subsequent adjustment upon final determination of price. At the request of the War Department or Navy Department, but not more frequently than once each three months, Defense Supplies Corporation will examine the expenses it has incurred in administering the gasoline program (estimating overhead and other indeterminables) and will make such adjustment as may be necessary in its charge of 1/200 of one cent per gallon to approximate the estimated amount of actual expenses.

10. Pending renegotiation of contracts between the refiners and Defense Supplies Corporation to provide for the delivery of gasoline of specifications other than those set forth in the said contracts, it is agreed that extraordinary expenses incurred by the refiners pursuant to authorization of Petroleum Administration will be interpreted to include additional costs incurred by refiners resulting from any change in specifications of the gasoline authorized by the Petroleum Administration for War. Defense Sup-

plies Corporation will pay refiners for all extraordinary expenses approved by the Petroleum Administration for War including those resulting from a change in specifications authorized by the Petroleum Administration for War in accordance with the "Memorandum of Understanding on Plan to Reimburse Manufacturers of 91 Octane and Higher Aviation Gasoline for Losses Incurred in Following Office of Petroleum Coordinator Recommendations" dated July 24, 1942, copy of which is attached as Exhibit B, and which shall remain in full force and effect except as modified hereby. Defense Supplies Corporation will submit reports to the War Department, Navy Department and refiners showing actual amounts of extraordinary expenses as approved by the Petroleum Administration for War and paid by Defense Supplies Corporation.

11. Payments to refiners by Defense Supplies Corporation, exclusive of reimbursement for extraordinary expenses, will be made at the time specified in and in accordance with the terms of the [121] contract between Defense Supplies Corporation and the refiners.

12. Deliveries of gasoline to all eligible commercial customers, Governmental Agencies and Lend-Lease Administration will be made only in accordance with allocations of the Allocations Committee, notice of which shall be communicated to the parties concerned by the Petroleum Administration for War. All applications received by Defense Supplies Corporation from commercial customers for gasoline

will be referred to the Petroleum Administration for War for consideration by this Committee.

13. Penalties, if any, which may be imposed upon Defense Supplies Corporation for failure to accept deliveries of gasoline under the contracts between it and the refiners will be paid by the War Department or Navy Department if the penalties are the proximate result of omission or failure of such Departments.

14. Defense Supplies Corporation may at the request of the War Department, Navy Department and Petroleum Administration for War enter into contracts for the purchase of 87 octane gasoline and 91 octane gasoline. At such time as these contracts are entered into the procedure which is hereinabove established for the receipt, allocation, distribution and financing of 100 octane aviation gasoline will apply to the receipt, allocation, distribution and financing of such 87 octane gasoline and 91 octane gasoline as may be purchased by Defense Supplies Corporation pursuant to such contracts.

15. The provisions of this memorandum become effective January 1, 1943, and shall be effective through June 30, 1943.

Executed as of December 19, 1942.

DEFENSE SUPPLIES
CORPORATION,

.....

President.

PETROLEUM ADMINISTRA-
TION FOR WAR,

.....

WAR DEPARTMENT,

.....

NAVY DEPARTMENT,

..... [122]

EXHIBIT R

AGREEMENT EXTENDING AND MODIFY-
ING THE AVIATION GASOLINE REIM-
BURSEMENT PLAN AND THE FOUR
PARTY PURCHASE AGREEMENT

July 1, 1944

On July 24, 1942, the War Department, Navy Department, (hereinafter referred to as "Army" and "Navy", respectively), Office of the Petroleum Coordinator (now the Petroleum Administration for War and hereafter referred to as "PAW"), and Defense Supplies Corporation (hereafter referred to as "DSC") executed an agreement which was amended and supplemented on June 3, 1943 and April 23, 1944, and which, together with the extension thereof herein provided for, is collectively

known as the "Aviation Gasoline Reimbursement Plan." The same parties on December 19, 1942 executed an agreement for the purchase and sale by Defense Supplies Corporation of 100 octane aviation gasoline, effective for the period January 1, 1943 through June 30, 1943 which was revised May 20, 1943 and extended through June 30, 1944 and supplemented January 3, 1944, and which, together with the extension thereof herein provided for, is collectively known as the "Four Party Purchase Agreement."

The above parties believe it necessary to the successful prosecution of the War to continue the programs contemplated by the above agreements and to effect the certain clarifications and changes in the agreements. The parties accordingly have agreed that the following shall be effective through June 30, 1945 and shall supersede any and all agreements heretofore executed by the parties hereto. Any and all provisions are subject to modification or cancellation on 30 days notice by Government to the petroleum refining industry (without prejudice to claims based on operations conducted on or before the date of such [151] modification or cancellation).

* * * *

B. The Four Party Purchase Agreement:

1. This Section B shall cover the period from July 1, 1944 through June 30, 1945.

2. Any money balances due Army and Navy from DSC as of June 30, 1944 in accordance with paragraph 1 of the agreement of December 19,

1942 or the amendments and supplements thereto shall be retained by DSC as advances against the purchase price to Army and Navy, respectively, of gasoline commonly referred to as 100 octane aviation gasoline (hereinafter called "gasoline") to be sold and delivered to them by DSC during the period July 1, 1944 through June 30, 1945 hereunder. Adjustments in the amount of such advances may be made during the effective period of this agreement with the mutual approval of (1) DSC and the Contracting Officer, Materiel Command, Army Air Forces, Wright Field, Dayton, Ohio, in the case of Army; or (2) DSC and the Paymaster General, Navy Department, Washington, D. C., in the case of Navy. Upon expiration or termination of this agreement and unliquidated balances of such advances from Army and Navy shall be applied respectively against any payments then due DSC from Army and Navy for the sale and delivery to them by DSC of gasoline hereunder and the remaining balances, if any, shall be repaid by DSC to Army and/or Navy as the case may be, or, if necessary, applied as a part of any reimbursement required under paragraph 15 hereof.

3. DSC appoints Army and Navy, or either of them, through their proper officers, or employees, its agents to accept for its account deliveries of all gasoline, to receipt on behalf of DSC for the same, and to redeliver all or part thereof in accordance with the provisions of this agreement. As used herein, "proper officers or employees" are defined as any officer or employee of Army or Navy who is prop-

erly authorized to accept deliveries of gasoline for his Department.

4. Purchase of gasoline from DSC will be subject, as to quantity and end user, to determinations and assignments of the Aviation Petroleum Products Allocations Committee (hereinafter called APPAC) and, as to refinery source, to release by PAW. Army and Navy may purchase and accept delivery of gasoline from DSC at such refineries in quantities no greater than those assigned by APPAC. Army and Navy reserve the right to purchase gasoline from DSC for delivery to purchasers or consumers other than Army and Navy.

5. When, from time to time, Army or Navy wishes to provide for delivery of all or part of the gasoline assigned to it, at points other than the refinery of manufacture, such gasoline shall be resold by DSC to any refiner or distributor designated by Army or Navy for the purpose of effecting ultimate sale and delivery of such gasoline at the required destination. Sales by DSC to such refiners or distributors shall be made at the prices established in accordance with paragraph 12 of this agreement, and, except for refiners having contracts with DSC for the purchase and sale of gasoline manufactured by them, shall be for cash at the option of DSC.

6. Where gasoline has been assigned by APPAC for delivery to consumers other than those named in this agreement, any refiner having a contract with DSC for the purchase and sale of gasoline may purchase from DSC, at the prices established

in accordance with paragraph 12 of this agreement, the [153] gasoline so assigned, for delivery to such other consumers or to their designated suppliers.

7. Deliveries to Army, Navy, refiners or distributors made in accordance with paragraphs 4, 5 and 6 above shall take effect immediately after acceptance of delivery for the account of DSC in accordance with paragraph 3 above. Receipts shall be issued and distributed in the form and manner to be prescribed by DSC indicating delivery to and redelivery from DSC.

8. Delivery of gasoline and passage of title from DSC to Army or Navy at the refinery will be considered as having been made when gasoline passes through the intake pipe of a vessel, when a loaded tank car is turned over to a railroad company, or when loading of a truck is completed, as the case may be. Title to gasoline being resold to refiners or distributors in accordance with paragraphs 5 and 6 above will pass to them on the issuance in their behalf to DSC of the receipts provided for in paragraph 7 above.

9. Army and Navy assume responsibility for scheduling deliveries of all gasoline purchased by them from DSC. All arrangements for transportation and for the furnishing of transportation facilities will be made by Army, Navy, refiners or distributors for the gasoline redelivered to each in accordance with paragraphs 4, 5 and 6 above. DSC will not be liable for the payment of any transportation charges for moving gasoline. Such charges will

be borne by Army and Navy or by customers purchasing gasoline from them or from refiners or distributors since all deliveries to and by DSC will be made at the refineries as provided in paragraph 8 hereof. Army and Navy are hereby authorized by DSC to take advantage of provisions of contracts between DSC and refiners for utilization of refiners' delivery facilities and services. [154]

10. For all gasoline purchased by them from DSC, Army and Navy, as the case may be, will give all notices of delivery required of DSC by its various contracts.

11. DSC, Army and Navy agree that the Certificates of Inspection of quantity and quality of each shipment to Army and Navy issued by a licensed inspector satisfactory to DSC shall be acceptable for invoicing and payment. Such certificates shall be distributed in the manner to be prescribed by DSC after consultation with Army and Navy.

DSC will waive the requirement that a licensed inspector inspect the gasoline and issue a certificate of Inspection provided that an authorized inspector or other authorized employee of Army or Navy accepts delivery and provided further that, upon acceptance of the gasoline under these circumstances, the authorized inspector or authorized employee issues a signed statement to DSC with respect to each shipment so accepted indicating that the requirement for the inspection and Certificate of Inspection by a licensed inspector has been waived by him.

The receipt, provided for in paragraph 7 hereof, will be acceptable for this purpose.

12. The prices per gallon to be charged by DSC for gasoline sold by it (whether to Army or to Navy, or to others) shall be determined as follows:

(a) For purposes of price determination under this agreement and renewals thereof the year shall be divided into quarters commencing the first day of January, April, July and October.

(b) Prices for gasoline of the several grades sold shall be established by PAW not less than thirty days before the beginning of the quarter, based upon estimates sufficient [155] to reimburse DSC for the cost of the gasoline, applicable taxes, out-of-pocket expenses of DSC attributable to the gasoline program (including, without limitation, cost of inspection and audits, bonus and overtime payments, maintenance of field representatives and engineers, etc.), disbursements under the Aviation Gasoline Reimbursement Plan, and other expenses related or incidental to the 100 Octane Aviation Gasoline Program, incurred by DSC upon recommendation of PAW, and overhead costs of DSC in administering the gasoline program in the amount of 1/200 of one cent per gallon, except as provided for in sub-paragraph (d) of this paragraph 12.

(c) In establishing quarterly prices pursuant to subparagraph (b) of this paragraph 12, adjustments shall be made to compensate for differences, if any, found to exist between the actual costs for

any preceding quarter, computed pursuant to subparagraph (b), and the estimates for that quarter. The prices so established shall be final, and not subject to further adjustment, and shall apply to all gasoline sold by DSC during such quarter.

(d) At the request of Army or Navy, or on its own motion, but not more frequently than once during each quarter, DSC shall examine the expenses it has incurred in administering the gasoline program (estimating overhead and other indeterminables) and shall make such adjustment in its charge of $1/200$ of one cent per gallon as will approximate actual expenses and as may be agreed upon between the parties hereto.

13. Gasoline sold by DSC to refiners or distributors for delivery to Army, Navy and other customers in accordance with paragraphs 5 and 6 hereof shall be resold by the refiners or [156] distributors at a price not to exceed the price paid by them to DSC, plus such delivery and service charges and applicable taxes as are agreed upon by the refiners or distributors and Army, Navy or such other customers.

14. Deliveries of all gasoline hereunder shall be made only in accordance with assignments of AP-PAC, notice of which shall be communicated to the parties concerned by PAW.

15. Army and Navy shall, proportionately to their respective aggregate purchases of gasoline from January 1, 1943 to June 30, 1945, both dates

inclusive, reimburse DSC for all disbursements made by it in the public interest as a result of any breach, termination or cancellation of its contracts and/or sub-contracts for the production of gasoline and components, or of any other arrangements made under the Four Party Purchase Agreement or Aviation Gasoline Reimbursement Plan.

WAR DEPARTMENT

/s/ ROBERT P. PATTERSON

Under Secretary of War

DEFENSE SUPPLIES CORPORATION

/s/ GEORGE H. HILL, JR.

Executive Vice President

NAVY DEPARTMENT

/s/ JAMES FORRESTAL

Secretary of the Navy

PETROLEUM ADMINISTRATION FOR WAR

/s/ RALPH K. DAVIES

Deputy Petroleum Administrator

[Endorsed]: Filed July 2, 1945. [157]

[Title of District Court and Cause.]

MOTION FOR SUBSTITUTION OF PARTY
DEFENDANT AND NOTICE OF MOTION

Plaintiff, Southern Pacific Company, represents to the court as follows:

1. This action was brought by plaintiff to recover the sum of \$23,049.51, being unpaid balances of the transportation charges of shipments of benzol made during 1942 and 1943 from Seattle, Washington, to Los Angeles, California, for Defense Supplies Corporation, which amount Defense Supplies Corporation failed and refused to pay. The benzol was admittedly owned by and was the property of Defense Supplies Corporation at the time of transportation.

2. Defense Supplies Corporation claimed in this action that it was entitled to make land-grant deductions in the aggregate sum of \$23,049.51 from the tariff [158] charges for the transportation services performed on the ground that the benzol, admittedly owned by it at the time of transportation was, at the time of transportation, military and naval property of the United States moving for military and naval and not for civil use within the meaning of Section 321 of Title III, Part II, of the Transportation Act of 1940, which reserves to the United States land-grant deductions from the tariff charges for the transportation of military or naval property of the United States moving for military or naval and not for civil use.

3. Reconstruction Finance Corporation is a corporation created by the Reconstruction Finance Corporation Act (47 Stat. L. 5), and all of its capital stock is owned by the United States. It does business and has an agent and representative in the City and County of San Francisco in the Northern District of California. Prior to July 1, 1945, the date of dissolution of Defense Supplies Corporation, as hereinafter set forth, Reconstruction Finance Corporation owned all of the capital stock of Defense Supplies Corporation.

4. By Senate Joint Resolution 65 (Public Law 109 - 79th Congress, c. 215, 1st Session), approved June 30, 1945, defendant Defense Supplies Corporation, was dissolved as of July 1, 1945, and said resolution provides that all functions, powers, duties and authority of said Corporation, together with all its documents, books of account, records, assets and liabilities of every kind and nature, are thereby transferred to Reconstruction Finance Corporation and "shall be performed, exercised, and administered by that Corporation in the same manner and to the same extent and effect as if originally vested in Reconstruction Finance Corporation." Said resolution further provides that Reconstruction Finance Corporation shall assume and be subject to all liabilities whether arising out of contract or otherwise of said Defense Supplies Corporation, and that no suit, action or other proceeding [159] lawfully commenced by or against such corporation shall abate by reason of the enactment of the joint resolution, but that "the court, on motion or supplemental peti-

tion filed at any time within twelve months after the date of such enactment, showing a necessity for the survival of such suit, action or proceeding to obtain a determination of the questions involved, may allow the same to be maintained by or against the Reconstruction Finance Corporation.”

5. Plaintiff, pursuant to said Joint Resolution 65, desires to have this action continued and maintained against said Reconstruction Finance Corporation.

6. There is a necessity for the survival of said action to obtain a determination of the questions involved, for the following reasons:

(a) Reconstruction Finance Corporation, successor in interest of Defense Supplies Corporation, takes the same position as Defense Supplies Corporation took in this action, namely, that the benzol shipped, admittedly owned by Defense Supplies Corporation at the time of shipment, was, at the time of transportation, military and naval property of the United States moving for military and naval and not for civil use within the meaning of Section 321 of Title III, Part II, of the Transportation Act of 1940, which reserves to the United States land-grant deductions from the tariff charges for the transportation of military or naval property of the United States moving for military or naval and not for civil use, and that therefore Defense Supplies Corporation was entitled to land-grant deductions from the tariff charges.

(b) The dissolution of the Defense Supplies

Corporation has in no way caused the questions involved in this action to become moot, and has not dispensed with the necessity of maintaining this action to determine the questions involved.

Wherefore plaintiff moves this court for an order substituting Reconstruction Finance Corporation in the place and stead of Defense Supplies Corporation as party defendant in this action and continuing and maintaining said action against said Reconstruction Finance Corporation without prejudice to any proceedings already had in this action. This motion is based on the pleadings and other papers on file in this action, draft of proposed order, affidavit of Charles W. Burkett, Jr., and memorandum of points and authorities in support of motion for substitution of party defendant, said draft of proposed order, affidavit, and memorandum being attached to and served and filed with this motion.

Dated this 26th day of October, 1945.

/s/ C. O. AMONETTE,

/s/ CHARLES W. BURKETT, JR.,
Attorneys for Plaintiff

NOTICE OF MOTION

To defendant Defense Supplies Corporation and Theodore R. Meyer, Esq., R. L. Miller, Esq., Joseph F. Hogan, Esq., and Messrs. Brobeck, Phleger & Harrison, its attorneys:

Please Take Notice that the undersigned will bring the above motion on for hearing before this

court at Room 258, United States Courts and Post Office Building, 7th and Mission Streets, City and County of San Francisco, State of California, on Monday, the 5th day of November, 1945, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

/s/ C. O. AMONETTE,
/s/ CHARLES W. BURKETT, JR.,
Attorneys for Plaintiff [161]

Reconstruction Finance Corporation consents to the foregoing motion and notice of motion and to the entry of an order, in the form attached, granting said motion.

Dated: October 26, 1945.

RECONSTRUCTION FINANCE CORPORATION

/s/ THEODORE R. MEYER,
/s/ R. L. MILLER,
/s/ JOSEPH F. HOGAN,
/s/ BROBECK, PHLEGER & HARRISON,
Its Attorneys

Receipt of a copy of the foregoing motion and notice and papers attached is hereby acknowledged this 26th day of October, 1945.

/s/ THEODORE R. MEYER,
/s/ R. L. MILLER,
/s/ JOSEPH F. HOGAN,
/s/ BROBECK, PHLEGER & HARRISON,
Attorneys for Defendant

[Endorsed]: Filed Dec. 28, 1945. [162]

[Title of District Court and Cause.]

AFFIDAVIT OF CHARLES W. BURKETT, JR.,
IN SUPPORT OF MOTION FOR SUBSTITUTION OF PARTY DEFENDANT

State of California,

City and County of San Francisco—ss.

Charles W. Burkett, Jr., being first duly sworn,
says:

1. He is one of the attorneys for plaintiff, Southern Pacific Company, in the above entitled action.

2. This action was brought by plaintiff to recover the sum of \$23,049.51, being unpaid balances of the transportation charges on shipments of benzol made during 1942 and 1943 from Seattle, Washington, to Los Angeles, California, for Defense Supplies Corporation, which amount Defense Supplies Corporation failed and refused to pay. The benzol was admittedly owned by and [163] was the property of Defense Supplies Corporation at the time of transportation.

3. Defense Supplies Corporation claimed in this action that it was entitled to make land-grant deductions in the aggregate sum of \$23,049.51 from the tariff charges for the transportation services performed on the ground that the benzol, admittedly owned by it at the time of transportation, was, at the time of transportation, military and naval property of the United States moving for military and naval and not for civil use within the meaning of Section 321 of Title III, Part II, of the Transpor-

tation Act of 1940, which reserves to the United States land-grant deductions from the tariff charges for the transportation of military or naval property of the United States moving for military or naval and not for civil use.

4. Reconstruction Finance Corporation is a corporation created by the Reconstruction Finance Corporation Act (47 Stat. L. 5), and all of its capital stock is owned by the United States. It does business and has an agent and representative in the City and County of San Francisco in the Northern District of California. Prior to July 1, 1945, the date of dissolution of Defense Supplies Corporation, as hereinafter set forth, Reconstruction Finance Corporation owned all of the capital stock of Defense Supplies Corporation.

5. By Senate Joint Resolution 65 (Public Law 109 - 79th Congress, c. 215, 1st Session), approved June 30, 1945, defendant, Defense Supplies Corporation, was dissolved as of July 1, 1945, and said resolution provides that all functions, powers, duties and authority of said Corporation, together with all its documents, books of account, records, assets and liabilities of every kind and nature, are thereby transferred to Reconstruction Finance Corporation and "shall be performed, exercised, and administered by that Corporation in the same manner and to the same extent and [164] effect as if originally vested in Reconstruction Finance Corporation." Said resolution further provides that Reconstruction Finance Corporation shall assume and be sub-

ject to all liabilities whether arising out of contract or otherwise of said Defense Supplies Corporation, and that no suit, action or other proceeding lawfully commenced by or against such corporation shall abate by reason of the enactment of the joint resolution, but that "the court, on motion or supplemental petition filed at any time within twelve months after the date of such enactment, showing a necessity for the survival of such suit, action, or other proceeding to obtain a determination of the questions involved, may allow the same to be maintained by or against the Reconstruction Finance Corporation."

6. There is a necessity for the survival of said action to obtain a determination of the questions involved, for the following reasons:

(a) Reconstruction Finance Corporation, successor in interest of Defense Supplies Corporation, takes the same position as Defense Supplies Corporation took in this action, namely, that the benzol shipped, admittedly owned by Defense Supplies Corporation at the time of shipment, was, at the time of transportation, military and naval property of the United States moving for military and naval and not for civil use within the meaning of Section 321 of Title III, Part II, of the Transportation Act of 1940, which reserves to the United States land-grant deductions from the tariff charges for the transportation of military or naval property of the United States moving for military or naval and not for civil use, and that therefore Defense Sup-

plies Corporation was entitled to land-grant deductions from the tariff charges.

(b) The dissolution of Defense Supplies Corporation has in no way caused the questions involved in this action to become moot, and has not dispensed with the necessity of maintaining [165] this action to determine the questions involved.

/s/ CHARLES W. BURKETT, JR.

Subscribed and sworn to before me this 26th day of October, 1945.

[Seal] /s/ A. L. WHITTLE,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission expires September 18, 1946.

[Endorsed]: Filed Oct. 26, 1945. [166]

[Title of District Court and Cause.]

ORDER FOR SUBSTITUTION OF
PARTY DEFENDANT

This cause came on for hearing on plaintiff's motion for substitution of Reconstruction Finance Corporation as a party defendant to this action in the place and stead of Defense Supplies Corporation and for continuing and maintaining this action against Reconstruction Finance Corporation, without prejudice to any proceedings already had, and it appearing to the Court that there is a necessity for the survival of this action to obtain a determination of the questions involved;

It Is Ordered, that Reconstruction Finance Corporation be and it is hereby substituted as party defendant in the place and stead of Defense Supplies Corporation; that the title of the [167] action be amended accordingly; and the action be continued and maintained against said Reconstruction Finance Corporation without prejudice to any proceedings already had in this action.

Dated this 5th day of November, 1945.

LOUIS E. GOODMAN

Judge of said United States District Court.

[Endorsed]: Filed Nov. 5, 1945. [168]

[Title of District Court and Cause.]

Appearances: C. W. Durbrow, Charles W. Burckett, Jr., C. O. Amonette, 65 Market Street, San Francisco 5, California. Attorneys for Plaintiff. Theodore R. Meyer, R. L. Miller, Joseph F. Hogan, Brobeck, Phleger & Harrison, 111 Sutter Street, San Francisco 4, California. Attorneys for Defendant.

OPINION

Goodman, District Judge.

During the years 1942 and 1943, defendant Defense Supplies Corporation shipped to itself from Seattle, Washington [169] to Los Angeles, California, via the railroads of plaintiff and other participating carriers and upon government bills-of-

lading, certain tank cars of motor benzol. Defendant refused to pay plaintiff, as the delivering carrier, for such transportation at the commercial rates established under tariffs filed with the Interstate Commerce Commission. Instead it paid a lower rate, arrived at by deducting from the tariff rate certain so-called land grant allowances reserved to the United States under the Transportation Act of 1940 where "military or naval property of the United States" is transported for "military or naval and not for civil use," over the lines of those railroad companies that had received land grants from the United States. Transportation Act of 1940 c. 722, sec. 321, 54 Stat. 954; 49 USCA S 65.

Prior to September 18, 1940, the United States was the beneficiary of freight rate deductions upon the transportation of any kind of government property that moved over railroads which had received land grants from the United States and over other railroads signing so-called "equalization agreements" in order to meet the land-grant railroad rates. (*Lake Superior & M.R. Co. v. U. S.* 93 U.S. 442, 23 L. ed. 965; *Atchison T & S.F.R.R. Co. v. U. S.* 15 Ct. Cl. 126; Act of June 7, 1924, c. 291, 10 USCA 1375; *Powell v. U. S.* 60 Fed. Supp. 433, 435, 436.)

However by the Act of 1940, as to those carriers who theretofore released and quitclaimed to the United States, the lands previously granted to them by the government, (Sec. 321b) the land-grant deductions allowed the United States apply only to

military or naval property of the United States moving for military or naval use. [170]

All of the carriers participating in the transportation of the benzol, including plaintiff, were either land-grant aided roads or had entered into equalization agreements, and all of such land-grant aided carriers had filed the releases required by the Act.

This action seeks the recovery of the sum of \$23,-049.51 being the amount of the deducted land-grant allowances.

If the benzol was, at the time of its transportation, military or naval property of the United States being moved for military or naval and not for civil use, plaintiff cannot recover. On the other hand, if the benzol was not military or naval property of the United States nor if it was not transported for military or naval use, plaintiff should recover.

The cause was submitted upon briefs after the filing of a written stipulation of facts.

Plaintiff's first contention is that the motor benzol was not property of the United States because it was owned at the time by defendant Defense Supplies Corporation* which plaintiff claims to be an entity separate and distinct from the United States.

However, in none of the cases cited by plaintiff was it squarely adjudicated that property of which the United States was sole beneficiary, was not its

* Created under the authority of Sec. 5d(3) of the Reconstruction Finance Corp. Act, 15 USCA §606(b)(3). 1944 Cumulative Annual Pocket Part.

property because the naked title was held by a corporate instrumentality. On the other hand, in the following cases where property was carried in the names of corporate instrumentalities, such property was held to be government owned: *Clallams* [171] County, Wash., v. U. S. 263 U. S. 341 (*Spruce Production Corporation*); *King County, Wash., v. U. S. Shipping Board Emergency Fleet Corporation*, (9 Cir.) 282 Fed. 950; *U. S. Shipping Board Emergency Fleet Corp. v. Delaware Co., Pa.* (3 Cir.) 17 Fed. (2d) 40; *U. S. v. Skinner & Eddy Corp.* 28 Fed. (2d) 373; *Chevy Cotton Mills Inc. v. U. S.* 59 Fed. Supp. 122 (*Reconstruction Finance Corp.*); *Inland Waterways Corp. v. Young*, 309 U. S. 517. Directly in point as to *Defense Supplies Corporation* is the case of *Defense Supplies Corp. v. U. S. Lines Co.* 57 Fed. 291. (decision of Judge Knox.)

It is urged by plaintiff that Congress did not intend that the words "property of the United States" as used in the *Transportation Act of 1940* should embrace property held in the name of corporate instrumentalities, because while in other regulatory statutes specific mention is made of "government owned or controlled corporations," such mention is not made in the *Transportation Act of 1940*. This argument, however, fails for the reasons given in *Keifer & Keifer v. Reconstruction Finance Corp.* 306 U. S. 381, and also because a true appraisal of the purpose and background setting of the *Transportation Act of 1940* negates any imputation that Congress intended such an irrational or capricious objective as to deprive the United States

of the rights and benefits attaching to ownership of its property held in the name of this particular instrumentality of government. Other arguments urged by plaintiff in this connection are not of sufficient substance to warrant further comment.

Plaintiff's second contention is that the benzol transported was not military or naval property. Here is presented a question of first impression. Its resolution requires appraisal of the purpose and nature of defendant's [172] powers and activities. During the period preceding the attack on Pearl Harbor and also subsequent thereto, various agencies of the government, corporate and otherwise, were established to acquire, produce and distribute material and commodities for use in the national defense and to further the successful prosecution of the war. Defendant was such an agency. (Sec. 5(d)(3) Reconstruction Finance Corp. Act. 15 USCA 606(b)(3).

After Pearl Harbor, the government decided to and did acquire through defendant agency large quantities of benzol for use principally* in the manufacture of aviation gasoline and synthetic rubber tires for the armed forces. It is urged on behalf of plaintiff that in order to be classified as naval or military property, the benzol had to be acquired by the War or Navy Departments in the manner and

* Approximately 87% of the total benzol shipped was used in the making of aviation gasoline and synthetic rubber tires for the armed forces. About 13% found its way incidentally and eventually into non-military channels.

by officers or agencies specially authorized by the Congress to act for such Departments and with monies appropriated by Congress for that purpose. Viewed in the context and against the background of the Transportation Act of 1940, this is too narrow and illiberal an interpretation of the language of the Act.

It is true, as stated by plaintiff, that pursuant to its constitutional powers to raise and equip armies and navies, Congress has from time to time appropriated monies to acquire properties for the armed forces and has designated the officers authorized to so act, in the case of the Army, by 10 USCA 1191, and in the case of the Navy, by 34 USCA 560. It is also true that defendant corporation has no Congressional authority to make purchases for the Army or Navy Departments. [173]

But it does not follow at all that, within the purview of the Transportation Act of 1940, property purchased and transported by the Defense Supplies Corporation may not be "military or naval property" of the United States. The words "military" and "naval" as used in the Act are descriptive adjectives. In context they may refer to property of the War or Navy Departments but they also properly and logically are descriptive, irrespective of ownership, of the nature of the property itself, with respect not merely to its tangible form and characteristics but as well, as is the case here, to the nature of its contemplated use. Having in mind the history of the "land grant allowance" legislation,

it is clear to me that Congress did not intend to retain for the benefit of the United States reduced rates for the transportation only of properly assigned to the War or Navy Departments and fit for immediate use and not for its property undeniably dedicated to military use but not yet assigned to the War Department because not at the moment in the ultimate form usable in actual conflict.

The powers granted by Congress to defendant (Charter clause 5 to acquire, produce and deal in materials and implements of war on a vast scale, plainly indicate Congressional awareness of the advantageous facilities afforded by defendant agency in the handling of material necessitated by modern methods of warfare requiring total mobilization of resources. Moreover, the stipulation of facts recognizes that defendant, in acquiring and transporting the benzol, was functioning in cooperation with the naval and military establishments of the United States.

If the Army or Navy were, at the time in question [174] moving the benzol via plaintiff's railroad to the same refineries for the same purpose, plaintiff would not object to the claimed land grant allowance. This is so by the force of the very argument made that the statutory language limits the statutory benefit to military property of the War or Navy Departments. By this token, the benzol is none the less military property moving for military use, because of its control at the time by another lawful agency of the United States.

I conclude that the benzol was in fact military or naval property of the United States.

We now reach the final question raised, viz: Was the benzol "moving for military or naval and not civil use?"

Concededly, the United States would not be entitled to the reduced rate allowed by the statute even if the benzol were military or naval property, unless it also appeared that it was being transported for military and not civil use. This is so because the United States might very conceivably move military or naval property for purely civilian and non-military use.

The term "military" is defined in Funk & Wagnall's New Standard Dictionary, in part, as "of or pertaining to soldiers, arms, or warfare . . . warlike . . . martial." Bouvier speaks of it as "anything pertaining to war or to the Army." Third Revision Vol. 2, p. 2209.

On the other hand "civil" is defined as "pertaining to a citizen in regard to ordinary affairs; opposed to ecclesiastical or military." (Funk & Wagnall.)

Thus the terms "military" and "civil" are mutually exclusive. The benzol here was to be manufactured into aviation gasoline and tires for the armed forces. It [175] certainly did not pertain "to a citizen in regard to ordinary affairs." Its transportation was to place where it was to be used in greatest part "pertaining to soldiers, arms or

warfare." Its relationship to the physical force of conflict and combat was actual and proximate.

That the benzol had to be processed and other component material added, does not, as contended, detract from its status as military property at the time of transportation. To fix its status according to the standards proposed by plaintiff would involve refinements of evaluation too speculative and too far removed from realities. At what point would its "military use" become an actuality? When the first drop was mixed with added material? When the manufacturing process was completed? When the first drum of gasoline or first tire started on their way? When the gasoline was syphoned into an airplane tank? Or perhaps not until the airplane had entered upon the performance of its mission?

The contention that the property was not moving for "use" but for sale to the processing oil refineries lacks merit, for the so-called "sale" to the refineries was but an intermediate step in the use.

There is, in my opinion, a final and persuasive basis for the court's interpretation of the terms "military property" and "military use" as expressed in the Act. Prior to the outbreak of World War II, a narrower and stricter meaning might well be attached to these phrases, because up to that time through the course of history, military and naval operations had restricted themselves to specific areas and theatres. Human ingenuity in waging war had been limited by space and distance. But

after 1939, the [176] horrors of unlimited total war became a certainty. At or about the time of the passage of the Transportation Act of 1940, many other statutes were enacted by Congress in the endeavor to prepare for our anticipated participation in the struggle.* Total mobilization required the creation of agencies to produce and gather the resources of war. Thus much material which in older days might have lacked the classical military habilitments, became of vital military importance. Hence it is that a just and fair adjudication of the meaning of the statute's language cannot be made without considering the over-all effect of the concept of total global warfare.

Judgment will go for defendant. Findings may be prepared and presented in accordance with the Rules.

Dated: January 21st, 1946.

[Endorsed]: Filed Jan. 21, 1946. [177]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiff filed its complaint herein on July 12, 1944, and on January 10, 1945, the defendant therein named, Defense Supplies Corporation, a corpora-

* See notes to the opinion of Judge Hutcheson in *Powell v. United States*, 60 Fed. Supp. 433 as to the related legislation.

tion, filed its answer thereto. The parties thereafter entered into and lodged with the court a stipulation embodying all of the evidentiary facts pertinent to the issues raised by said complaint and answer. On November 5, 1945, upon motion of the plaintiff the above-entitled court entered its order substituting Reconstruction Finance Corporation, a corporation, as party defendant to this action, in the place and stead of said Defense Supplies Corporation. Briefs were thereupon submitted to the court and on November 19, 1945, the cause was submitted.

The court having fully considered the facts and the law in this matter, finds the facts and states the conclusions of law as follows:

FINDINGS OF FACT

I.

Plaintiff is now, and was during all of the times hereinafter mentioned, a corporation duly created, organized and existing under the laws of the State of Kentucky, authorized to do and doing business in the State of California and in other states, and, as such corporation, was during all of said times engaged as a common carrier by railroad in the transportation of persons and property for hire in interstate commerce over its lines and in participation with other common carriers by railroad in and through various states of the United States.

II.

The original defendant, Defense Supplies Cor-

poration, was, during all of the times hereinafter mentioned prior to July 1, 1945, a corporate instrumentality of the United States created [179] by the United States pursuant to Section 5d(3) of the Reconstruction Finance Corporation Act (15 U.S.C.A., Sec. 606b(3)). It objects, purposes and powers are those provided for in the Act pursuant to which it was created. All of its capital stock was owned by Reconstruction Finance Corporation. Said Reconstruction Finance Corporation was at all times herein mentioned and still is a corporate instrumentality of the United States created by the United States government by the Act of Congress known as the Reconstruction Finance Corporation Act (15 U.S.C.A., sections 601 et seq.). All of the stock of said Reconstruction Finance Corporation was at all times and still is owned by the United States government. By Senate Joint Resolution 65 (Public Law 109 79th Cong., c. 215, 1st Sess.) approved June 30, 1945, Defense Supplies Corporation was dissolved as of July 1, 1945, and pursuant to said resolution all of its functions, powers, duties and authority, together with all its documents, books of account, records, assets and liabilities of every kind and nature were thereby transferred to Reconstruction Finance Corporation. Pursuant to the terms of said resolution and upon proper showing to this court and by order of this court dated November 5, 1945, said Reconstruction Finance Corporation was substituted as defendant in this action in the place and stead of said Defense Supplies Corporation, and said action was thereby

allowed to be continued and maintained against said Reconstruction Finance Corporation. The principal office of the original defendant, Defense Supplies Corporation, was located in the City of Washington, District of Columbia, but at all times herein mentioned prior to July 1, 1945, it did business in the City and County of San Francisco, in the [180] Northern District of California.

III.

During the years 1942 and 1943, commencing in the month of July, 1942, defendant shipped to itself from Seattle, Washington, to Los Angeles, California, upon government bills of lading over the lines of plaintiff and other participating carriers certain tank cars of motor benzol. Prior to, at the time of, and during said transportation, legal title to said motor benzol was vested in said Defense Supplies Corporation, a corporate instrumentality of the United States. Plaintiff was the final and delivering carrier and made delivery of said shipments in accordance with the bills of lading.

IV.

The lines of plaintiff over which said motor benzol was transported were constructed with the aid of grants of land received from the United States, either directly or through a predecessor or predecessors in interest. The portions of the lines of all carriers by railroad participating with plaintiff in the transportation of said motor benzol, over which said motor benzol was transported, were

either similarly constructed with the aid of grants of land received from the United States or, with respect to such portion of the lines not so constructed by such aid, such carrier had, prior to the shipments here involved, entered into equalization agreements with the United States under the terms of which the net charges to the United States for transportation service over such lines were equalized with the transportation charges applicable to transportation over lines constructed with the aid of such grants of land. All the carriers by railroad owning and operating or operating lines of railroad so constructed with the aid of such land [181] grants and all carriers by railroad who had entered into such equalization agreements, and each of them, had prior to and at the time of the shipments of motor benzol here involved, filed with the Secretary of the Interior of the United States, in the form and manner prescribed by him, the releases specified to be filed by the provisions of paragraph (b) of Section 321 of Part II, Title III, of the Transportation Act of 1940 (54 Stat. L. 954). Each of the releases so filed was approved by the Secretary of the Interior prior to any of the shipments in question and the performance of the transportation services involved herein.

V.

Said shipments of motor benzol so shipped upon government bills of lading were billed and forwarded with charges collect and plaintiff, being the delivering carrier charged with the duty of

collecting the entire freight charges on said shipments, presented to defendant its respective bills therefor aggregating the sum of \$56,736.14 for such transportation services. Defendant, claiming the right to make land-grant deductions in amounts aggregating the sum of \$23,049.51, refused to make the payments demanded but instead paid to plaintiff amounts aggregating the sum of \$33,686.63. The amount admittedly payable by defendant to plaintiff for the transportation services involved herein, if defendant is entitled to land-grant deductions under the provisions of Section 321(a) of the Transportation Act of 1940, on the entire quantity of motor benzol transported over the lines of the plaintiff and the participating carriers, is the said sum of \$33,686.63. The said amounts so paid were accepted by plaintiff under protest as part payment [182] only and plaintiff subsequently and prior to the bringing of this action, rendered its bills to defendant for the difference between the amounts so paid and certain amounts claimed by it to be due upon the basis of the application of the full commercial rates specified in tariffs duly published and filed with the Interstate Commerce Commission in effect at the time the shipments were made. It is admitted by the parties that if defendant is entitled to land-grant deductions with respect to none of the shipments of motor benzol involved in this case, that the difference between such full published tariff rates and the amounts paid by defendant, which difference plaintiff would in such event be entitled to recover, is \$23,049.51.

VI.

The entire quantity of motor benzol involved in this case was at the time of its transportation owned by Defense Supplies Corporation.

The entire quantity of ^{VII}motor benzol involved in this case was at the time of its transportation military or naval property of the United States.

VIII.

All of said motor benzol was at the time of its said transportation, moving for use in the production of aviation gasoline and synthetic rubber for use in the direct prosecution of war. The entire quantity of motor benzol involved in this case was at the time of its transportation moving for military or naval and not for civil use. [183]

CONCLUSIONS OF LAW

I.

The motor benzol involved in this case, naked legal title to which at the time of its transportation stood in the name of the Defense Supplies Corporation, a corporate instrumentality of the United States, was at the time of its said transportation "property of the United States" within the meaning of that language as it is used in Section 321(a) of the Transportation Act of 1940.

II.

The motor benzol involved in this case was, at the time of its transportation, "military or naval" property of the United States and was "moving for

military or naval and not for civil use'' within the meaning of that language as it is used in Section 321(a) of the Transportation Act of 1940.

II.

Defense Supplies Corporation was entitled to make land-grant deductions from the applicable published tariff rates under the provisions of Section 321(a) of the Transportation Act of 1940, with respect to all of the transportation services provided by plaintiff and other participating carriers in the transportation of the motor benzol involved in this case.

IV.

Plaintiff is entitled to recover nothing from defendant, and defendant is entitled to its costs of suit herein incurred.

It Is So Ordered and the Clerk shall enter judgment forthwith.

Dated this 18th day of February, 1946.

LOUIS E. GOODMAN,

Judge of the United States
District Court.

[Endorsed]: Filed Feb. 18, 1946. [184]

In the United States District Court for the
Northern District of California, Southern Division

No. 23495-G

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Plaintiff,

vs.

RECONSTRUCTION FINANCE CORPORA-
TION, a Corporation,

Defendant.

JUDGMENT

The above entitled action was submitted to the court for decision upon the basis of the pleadings on file, a stipulation of facts, and briefs of the parties to the action. Messrs. C. O. Amonette and Charles W. Burkett, Jr., appeared as attorneys for the plaintiff, Southern Pacific Company, a corporation, and Theodore R. Meyer, R. L. Miller, Joseph F. Hogan and Brobeck, Phleger & Harrison appeared as attorneys for Defense Supplies Corporation, a corporation, the original defendant, and for Reconstruction Finance Corporation, a corporation, the substituted defendant.

The cause having been submitted to the court for consideration and decision, and the court having delivered and filed its findings of fact and conclusions of law;

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that Southern Pacific Company, a cor-

poration, the plaintiff herein, take nothing from the defendant.

Dated: February 28, 1946. [185]

LOUIS E. GOODMAN,
Judge.

Approved as to form, as provided in Rule 5(d):

/s/ C. O. AMONETTE,

/s/ CHARLES W. BURKETT, JR.,

Attorneys for Plaintiff.

Due service and receipt of a copy of the within is hereby admitted this 28th day of February, 1946.

C. O. AMONETTE,

CHARLES W. BURKETT, JR.,

Attorneys for Plaintiff,

Southern Pacific Company.

[Endorsed]: Filed Feb. 28, 1946. [186]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT OF APPEALS

Notice is hereby given that Southern Pacific Company, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 28th day of February, 1946.

Dated this 9th day of May, 1946.

/s/ C. O. AMONETTE,

/s/ CHARLES W. BURKETT, JR.,

Attorneys for Plaintiff.

[Endorsed]: Filed May 9, 1946. [187]

[Title of District Court and Cause.]

BOND COSTS ON APPEAL

Know All Men By These Presents, that we, Southern Pacific Company, a corporation, as principal, and Saint Paul-Mercury Indemnity Company, a corporation, as surety, are held and firmly bound unto Reconstruction Finance Corporation, a corporation, in the full and just sum of Two Hundred Fifty Dollars (\$250.00), to be paid to said Reconstruction Finance Corporation, its successors or assigns, to which payment, well and truly to be made, we bind ourselves jointly and severally by these presents.

In Witness whereof, said Southern Pacific Company, a corporation, has caused this obligation to be signed by its duly authorized Vice President, and its corporate seal to be thereunto affixed at San Francisco, California, this 8th day of May, 1946, and said Saint Paul-Mercury Indemnity Company, a corporation, has [188] caused this obligation to be signed by its duly authorized attorney-in-fact and its corporate seal to be thereunto affixed at San Francisco, California, this 8th day of May, 1946.

Whereas, on the 28th day of February, 1946, in an action depending in the United States District Court for the Northern District of California, Southern Division, between Southern Pacific Company, a corporation, plaintiff, and Reconstruction Finance Corporation, a corporation, defendant, a judgment was rendered against said Southern Pacific Company and said Southern Pacific Company

intends to appeal to the United States Circuit Court of Appeals for the Ninth Circuit from said judgment;

Now the condition of the above obligation is such, that if said Southern Pacific Company shall prosecute its appeal with effect and pay all costs if the appeal is dismissed or the judgment affirmed, or such costs as the appellate court may award if the judgment be modified, then the above obligation to be void, otherwise to remain in full force and virtue.

SOUTHERN PACIFIC COMPANY,

By D. J. RUSSELL,
Vice President.

Attest:

[Seal] ROY G. HILLEBRAND,
Assistant Secretary.

SAINT PAUL-MERCURY IN-
DEMNITY COMPANY,

[Seal] R. B. RYAN,
Its Attorney-in-Fact.

State of California,
City and County of San Francisco—ss.

On this 8th day of May in the year One Thousand Nine Hundred and Forty-six before me, A. L. Whittle, 65 Market St., a Notary Public in and for the City and County of San Francisco, State of California, personally appeared D. J. Russell, known to me to be the Vice President of the corporation described in and that executed the within instrument, and also known to me to be the person

who executed it on behalf of the corporation therein named and he acknowledged to me that such corporation executed the same. *

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, the day and year in this certificate first above written.

[Seal] A. L. WHITTLE,

Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires September 18, 1946.

ACKNOWLEDGMENT OF ATTORNEY- IN-FACT

State of California,
City and County of San Francisco—ss.

On this 8th day of May, 1946, before me, a Notary Public, within and for the said County and State, personally appeared R. B. Ryan, known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-Fact of and for the Saint Paul-Mercury Indemnity Company, Saint Paul, Minnesota, a corporation created, organized and existing under and by virtue of the laws of the State of Delaware, and acknowledged to me that he subscribed the name of the Saint Paul-Mercury Indemnity Company thereto as Surety, and his own name as Attorney-in-Fact.

[Seal] JANE M. DOUGHERTY,

Notary Public.

My Commission expires September 24, 1949.

[Endorsed]: Filed May 9, 1946. [189]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH
PLAINTIFF INTENDS TO RELY ON AP-
PEAL

The points on which plaintiff intends to rely on appeal are as follows:

I.

The Court erred in making its Finding of Fact No. VII in that:

1. Said finding is not supported by the evidence.

2. Said finding is contrary to the evidence in that the evidence (Stipulation of Facts) shows that:

(a) The motor benzol was purchased by and was, at the time of its transportation, the property of and owned by Defense Supplies Corporation, a corporate entity separate and distinct from the United States, and was not the property of the United States. [190]

(b) The motor benzol was not, at the time of its transportation, military or naval property but only a material suitable for use, in connection with other materials, in the manufacture or production of materials suitable for use, in connection with still other materials, in the manufacture or production of 100 octane aviation gasoline which, when manufactured or produced, was suitable for military or naval use and of synthetic rubber which, when manufactured or produced, was suitable for use in

the manufacture or production of rubber products suitable for military or naval use.

(c) The United States bought a portion of the rubber products and the 100 octane aviation gasoline, of which the motor benzol ultimately became a constituent part, for use by the Army and Navy.

3. Said finding was induced by an erroneous view of the law in that:

(a) Said finding is based on the view that the motor benzol which was purchased by and was, at the time of its transportation, the property of and owned by Defense Supplies Corporation, a corporate entity separate and distinct from the United States, was the property of the United States.

(b) Said finding is based on the view that the motor benzol, unsuitable at the time of its transportation for military or naval use, was, at the time of its transportation, military or naval property when materials manufactured or produced therefrom by purchasers of the motor benzol from Defense Supplies Corporation, subsequent to its transportation, were used, in connection with still other materials, in the manufacture or production of property suitable for military or naval use, which property was acquired by the United States for military or naval use. [191]

II.

The Court erred in making its Findings of Fact No. VIII in that:

1. Said finding is not supported by the evidence.
2. Said finding is contrary to the evidence in that the evidence (Stipulation of Facts) shows that:

(a) At the time of its transportation the motor benzol was moving for storage, processing and sale and was, subsequent to its transportation, stored and processed.

(b) Subsequent to its transportation the motor benzol was sold by Defense Supplies Corporation for use, in connection with other materials, in the manufacture or production of materials suitable for use, in connection with still other materials, in the manufacture or production of 100 octane aviation gasoline and of synthetic rubber, which was suitable for use in the manufacture or production of rubber products.

(c) Said motor benzol was used, in connection with other other materials, in the manufacture or production of materials which were suitable for use and used, in connection with still other materials, in the manufacture or production of 100 octane aviation gasoline suitable for military or naval use, and of synthetic rubber which was suitable for use and used in the manufacture or production of rubber products suitable for military or naval use.

(d) The United States bought a portion of the rubber products and the 100 octane aviation gaso-

line, of which the motor benzol ultimately became a constituent part, for use by the Army and Navy.

3. Said finding was induced by an erroneous view of the law in that said finding is based on the view that the use of the motor benzol, in connection with other materials, in the manufacture [192] or production of materials suitable for use and used, in connection with still other materials, in the manufacture or production of property suitable for military or naval use, was a military or naval use of the motor benzol.

III.

The Court's Conclusion of Law No. I is erroneous in that it is based on the erroneous Finding of Fact No. VII, and on the erroneous assumption, which is not supported by any evidence, that Defense Supplies Corporation had, at the time of transportation, only a naked legal title to the motor benzol, and in that it is contrary to the law and to the evidence, as set forth hereinbefore in Paragraph I.

IV.

The Court's Conclusion of Law No. II is erroneous in that it is based on the erroneous Findings of Fact Nos. VII and VIII, and in that it is contrary to the law and to the evidence, as set forth hereinbefore in Paragraphs I and II.

V.

The Court's Conclusion of Law No. III is erroneous in that it is based on the erroneous Findings

of Fact Nos. VII and VIII, and on the erroneous Conclusions of Law Nos. I and II, and in that it is contrary to the law and to the evidence, as set forth hereinbefore in Paragraphs I and II.

VI.

The Court's Conclusions of Law No. IV is erroneous in that it is based on the erroneous Findings of Fact Nos. VII and VIII, and on the erroneous Conclusions of Law Nos. I, II and III, and in that it is contrary to the law and to the evidence, as set forth hereinbefore in Paragraphs I and II.

VII.

The Court erred in failing to conclude that the motor benzol was not, at the time of its transportation, "property of [193] the United States" within the meaning of that language as it is used in Section 321 (a) of the Transportation Act of 1940, but was the property of and owned by Defense Supplies Corporation, a corporate entity separate and distinct from the United States.

VIII.

The Court erred in failing to conclude that the motor benzol was not, at the time of its transportation, "military or naval" property of the United States within the meaning of that language as it is used in Section 321(a) of the Transportation Act of 1940, but was only a material suitable for use, in connection with other materials, in the manufacture or production of materials suitable for use, in connection with still other materials, in the

manufacture or production of 100 octane aviation gasoline and synthetic rubber suitable for use in the manufacture or production of rubber products.

IX.

The Court erred in failing to conclude that the motor benzol was not, at the time of its transportation, "moving for military or naval and not for civil use" within the meaning of that language as it is used in Section 321(a) of the Transportation Act of 1940, but was moving for storage, processing and sale, which are not military or naval uses within the meaning of the language in Section 321(a).

X.

The Court erred in failing to conclude that Defense Supplies Corporation was not entitled to make land-grant deductions from the applicable published tariff rates with respect to any of the transportation services provided by plaintiff and other participating carriers in the transportation of the motor benzol involved in this case.

XI.

The Court erred in failing to conclude that plaintiff is [194] entitled to recover from defendant the sum of \$23,049.51 and its costs herein incurred.

Dated this 10th day of May, 1946.

/s/ C. O. AMONETTE,

/s/ CHARLES W. BURKETT, JR.,
Attorneys for Plaintiff.

Receipt of a copy of the within Statement of Points on Which Plaintiff Intends to Rely on Appeal is hereby acknowledged this 10th day of May, 1946.

/s/ THEODORE R. MEYER,

/s/ R. L. MILLER,

/s/ JOSEPH F. HOGAN,

/s/ BROBECK, PHLEGER &
HARRISON,

Attorneys for Defendant.

[Endorsed]: Filed May 10, 1946. [195]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Plaintiff designates the portions of the record, proceedings, and evidence to be contained in the record on appeal in this action as follows:

1. Complaint.
2. Answer.
3. Stipulation of facts.
4. Motion for substitution of party defendant and notice of motion.
5. Order for substitution of party defendant.
6. Opinion of the court.
7. Findings of fact and conclusions of law.
8. Judgment.
9. Notice of appeal. [196]
10. Bond for costs on appeal.

11. Statement of points on which appellant intends to rely on appeal.

12. This designation.

Dated this 10th day of May, 1946.

/s/ C. O. AMONETTE,

/s/ CHARLES W. BURKETT, JR.,

Attorneys for Plaintiff.

Receipt of a copy of the within Designation of Contents of Record on Appeal is hereby acknowledged this 10th day of May, 1946.

/s/ THEODORE R. MEYER,

/s/ R. L. MILLER,

/s/ JOSEPH F. HOGAN,

/s/ BROBECK, PHLEGER &

HARRISON,

Attorneys for Defendant.

[Endorsed]: Filed May 10, 1946. [197]

District Court of the United States

Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 197 pages, numbered from 1 to 197, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of Southern Pacific Company, a corporation, plaintiff, vs. Reconstruc-

tion Finance Corporation, defendant, No. 23495-G, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$19.70 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 12th day of June, A.D. 1946.

[Seal]

C. W. CALBREATH,

Clerk.

By M. E. VAN BUREN,

Deputy Clerk.

[Endorsed]: No. 11352. United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Company, a corporation, Appellant, vs. Reconstruction Finance Corporation, substituted as party defendant in the place of Defense Supplies Corporation, a corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed June 12, 1946.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 11352

SOUTHERN PACIFIC COMPANY, a corpora-
tion,

Appellant,

vs.

RECONSTRUCTION FINANCE CORPORA-
TION, a corporation,

Appellee.

STATEMENT OF POINTS ON WHICH AP-
PELLANT INTENDS TO RELY ON AP-
PEAL AND DESIGNATION OF POR-
TIONS OF RECORD

POINTS

The points on which appellant intends to rely on
appeal are as follows:

I.

The Court erred in making its Finding of Fact
No. VII in that:

1. Said finding is not supported by the evidence.
2. Said finding is contrary to the evidence in
that the evidence (Stipulation of Facts) shows
that:

(a) The motor benzol was purchased by and
was, at the time of its transportation, the property

of and owned by Defense Supplies Corporation, a corporate entity separate and distinct from the United States, and was not the property of the United States.

(b) The motor benzol was not, at the time of its transportation, military or naval property but only a material suitable for use, in connection with other materials, in the manufacture or production of materials suitable for use, in connection with still other materials, in the manufacture or production of 100 octane aviation gasoline which, when manufactured or produced, was suitable for military or naval use and of synthetic rubber which, when manufactured or produced, was suitable for use in the manufacture or production of rubber products suitable for military or naval use.

(c) The United States bought a portion of the rubber products and the 100 octane aviation gasoline, of which the motor benzol ultimately became a constituent part, for use by the Army and Navy.

3. Said finding was induced by an erroneous view of the law in that:

(a) Said finding is based on the view that the motor benzol which was purchased by and was, at the time of its transportation, the property of and owned by Defense Supplies Corporation, a corporate entity separate and distinct from the United States, was the property of the United States.

(b) Said finding is based on the view that the motor benzol, unsuitable at the time of its trans-

portation for military or naval use, was, at the time of its transportation, military or naval property when materials manufactured or produced therefrom by purchasers of the motor benzol from Defense Supplies Corporation, subsequent to its transportation, were used, in connection with still other materials, in the manufacture or production of property suitable for military or naval use, which property was acquired by the United States for military or naval use.

II.

The Court erred in making its Finding of Fact No. VIII in that:

1. Said finding is not supported by the evidence.
2. Said finding is contrary to the evidence in that the evidence (Stipulation of Facts) shows that:

(a) At the time of its transportation the motor benzol was moving for storage, processing and sale and was, subsequent to its transportation, stored and processed.

(b) Subsequent to its transportation the motor benzol was sold by Defense Supplies Corporation for use, in connection with other materials, in the manufacture or production of materials suitable for use, in connection with still other materials, in the manufacture or production of 100 octane aviation gasoline and of synthetic rubber, which was suitable for use in the manufacture or production of rubber products.

(c) Said motor benzol was used, in connection with other materials, in the manufacture or production of materials were suitable for use and used, in connection with still other materials, in the manufacture or production of 100 octane aviation gasoline suitable for military or naval use, and of synthetic rubber which was suitable for use and used in the manufacture or production of rubber products suitable for military or naval use.

(d) The United States bought a portion of the rubber products and the 100 octane aviation gasoline, of which the motor benzol ultimately became a constituent part, for use by the Army and Navy.

3. Said finding was induced by an erroneous view of the law in that said finding is based on the view that the use of the motor benzol, in connection with other materials, in the manufacture or production of materials suitable for use and used, in connection with still other materials, in the manufacture or production of property suitable for military or naval use, was a military or naval use of the motor benzol.

III.

The Court's Conclusion of Law No. I is erroneous in that it is based on the erroneous Finding of Fact No. VII, and on the erroneous assumption, which is not supported by any evidence, that Defense Supplies Corporation had, at the time of transportation, only a naked legal title to the motor benzol, and in that it is contrary to the law and to

the evidence, as set forth hereinbefore in Paragraph I.

IV.

The Court's Conclusion of Law No. II is erroneous in that it is based on the erroneous Findings of Fact Nos. VII and VIII, and in that it is contrary to the law and to the evidence, as set forth hereinbefore in Paragraphs I and II.

V.

The Court's Conclusion of Law No. III is erroneous in that it is based on the erroneous Findings of Fact Nos. VII and VIII, and on the erroneous Conclusions of Law Nos. I and II, and in that it is contrary to the law and to the evidence, as set forth hereinbefore in Paragraphs I and II.

VI.

The Court's Conclusions of Law No. IV is erroneous in that it is based on the erroneous Findings of Fact Nos. VII and VIII, and on the erroneous Conclusions of Law Nos. I, II and III, and in that it is contrary to the law and to the evidence, as set forth hereinbefore in Paragraphs I and II.

VII.

The Court erred in failing to conclude that the motor benzol was not, at the time of its transportation, "property of the United States" within the meaning of that language as it is used in Section 321(a) of the Transportation Act of 1940, but was the property of and owned by Defense Supplies

Corporation, a corporate entity separate and distinct from the United States.

VIII.

The Court erred in failing to conclude that the motor benzol was not, at the time of its transportation, "military or naval" property of the United States within the meaning of that language as it is used in Section 321(a) of the Transportation Act of 1940, but was only a material suitable for use, in connection with other materials, in the manufacture or production of materials suitable for use, in connection with still other materials, in the manufacture or production of 100 octane aviation gasoline and synthetic rubber suitable for use in the manufacture or production of rubber products.

IX.

The Court erred in failing to conclude that the motor benzol was not, at the time of its transportation, "moving for military or naval and not for civil use" within the meaning of that language as it is used in Section 321(a) of the Transportation Act of 1940, but was moving for storage, processing and sale, which are not military or naval uses within the meaning of the language in Section 321(a).

X.

The Court erred in failing to conclude that Defense Supplies Corporation was not entitled to make land-grant deductions from the applicable published tariff rates with respect to any of the transportation services provided by appellant and

other participating carriers in the transportation of the motor benzol involved in this case.

XI.

The Court erred in failing to conclude that appellant is entitled to recover from appellee the sum of \$23,049.51 and its costs herein incurred.

DESIGNATION

Appellant designates the entire record as certified by the District Court as necessary for consideration of the above points.

Dated this 12th day of June, 1946.

/s/ C. O. AMONETTE,

/s/ CHARLES W. BURKETT, JR.,

Attorneys for Appellant.

[Endorsed]: Filed June 12, 1946. Paul P. O'Brien, Clerk.

